

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT

**FREEDOM OF MEDIA
IN THE
WESTERN BALKANS**

DROI

EN

2014





DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

STUDY

FREEDOM OF MEDIA IN THE WESTERN BALKANS

Abstract

The study analyses media freedom and pluralism in the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, the former Yugoslav Republic of Macedonia and Serbia) in light of the EU enlargement policy. Despite the different stages of their EU accession paths, these countries share similar challenges, even if they are of different intensities. The study analyses the overall legal framework and its unsatisfactory levels of implementation, the role and the independence of PSB, the media market, and the status of journalists. It also outlines country-specific profiles, regarding these categories.

The paper outlines and analyses the current EU policies and financial instruments to foster media freedom and media pluralism in the region, including the Stabilisation and Association Process and specific *acquis*. It also analyses the issues in the context of the EU 'internal' and 'external' policy on media freedom and media pluralism. The study outlines the complementary roles of the CoE and the OSCE as setting common standards on media freedom in Europe and the EU institutions as being the main engine and guarantor for their implementation. Finally, the recommendations point towards the EU establishing a more long-term, integrated and comprehensive strategy of external help, monitoring and capacity building, as well as further co-ordination with the CoE and OSCE.

This study was requested by the European Parliament's Subcommittee on Human Rights.

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The authors are grateful to Pedrag BLAGOJEVIC, Boyko BOEV, Daniela BRKIC, Zhidas DASKALOVSKI, Chris DELISO, Amer DZIHANA, Arolda ELBASANI, Sasa GAJIN, Karl GIACINTI, Mehmed HALILOVIC, Tarik JUSIC, Jelena KOLO, Isabella KURKOWSKI, Remzi LANI, Luani LATIFI, Helena MANDIC, Davor MARKO, Snjezana MILIVOJEVIC, Sami NEZA, Brankica PETKOVIC, Dusan RELJIC, Jadranka VOJVODIC for their interviews.

The authors also thank their colleagues: Andrea CALDERARO, Giovanni GANGEMI and Paula GORI for the support; Emma LINKLATER for the initial language editing; and especially Lisa GINSBORG for the support in the research and the editing of the text. Konstantina BANIA contributed to the editing of the following sections: 4.1.1, 4.1.2, 4.1.3, 4.2.1, 4.2.2 and 4.2.3.

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LINGUISTIC VERSION

Original: EN

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The data used in this study were last updated in July 2014.

Editorial closing date: 22 October 2014.

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Printed in Belgium

ISBN: 978-92-823-6040-8

Doi: 10.2861/70542

The Information Note is available on the Internet at
<http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>

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EXECUTIVE SUMMARY

This study analyses the situation of media freedom and pluralism in the Western Balkans (Montenegro, the former Yugoslav Republic of Macedonia, Serbia and Albania as candidates for European Union (EU) membership and Bosnia and Herzegovina and Kosovo as potential candidates) in light of the EU enlargement policy. These countries are at different stages of their EU accession paths. Nonetheless, they share challenges and problems in the field of media freedom that are of the same nature, even if they are of different intensities and have different specificities.

In Part One, the study gives an overview of the current level of media freedom and pluralism in the region, focusing on the overall legal framework, the role and the independence of public service broadcasting, the market structure and its functioning, and the status of journalists.

The country-specific profiles, analysing the situation of media freedom in each country, constitute Part Two of the study. The analysis includes a description of the relevant legislative frameworks, the role of public service broadcasters, the economic situation and funding of media companies, and the working conditions and the professionalism of journalists. Despite the positive developments in the general legal framework of media freedom in the countries, and its progressive alignment with the EU norms and standards, unsatisfactory levels of implementation and widespread problems in the areas of media pluralism and media freedom remain in most countries.

In Part Three, the study gives an overview of the recent general European Union policy on media pluralism and media freedom. It also examines the role of external institutional actors regarding media freedom in the region. It looks at the role of the EU, its current policies and financial instruments to foster media freedom and media pluralism in the region. The EU is operating in the area mostly through the enlargement policy: media freedom is addressed through the Stabilisation and Association Process, mainly through the implementation of the *acquis* listed in chapter 10 (information society and media), chapter 23 (judiciary and fundamental rights) and chapter 24 (Justice, freedom and security). Freedom of the media is also linked with the fulfilment of the Copenhagen criteria and the respect of fundamental rights. The study calls for a more consistent EU 'internal' and 'external' policy on media freedom and media pluralism, a more focused approach on an effective EU competence in the sector of media freedom, and stresses the need to apply more effective instruments to the Western Balkan countries, in order to measure their compliance with European standards on media freedom. The study suggests the establishment of a comprehensive monitoring programme, based on (or as part of) the Media Pluralism Monitor (MPM) and/or the monitoring instrument that the South East European Media Observatory is developing. Following this overview, Part Four presents the interventions and application of EU policies in the Western Balkan countries. It outlines some specificity within the general context of the EU approach.

The study then (Part Five) acknowledges the pivotal roles the Council of Europe (CoE) and the Organisation for Security and Co-operation in Europe (OSCE) have in the diffusion of common standards on media freedom in Europe and the important part these two organisations play, together with the high influence of the EU, in the area. It stresses that the EU should reinforce its synergy with the CoE and the OSCE and use its strong position to set the conditionality for accession, according to policy strategies shared with the CoE and OSCE, in order to have a more effective and consistent policy on media freedom in the region. The study also examines to which extent media freedom is a priority for the Regional Cooperation Council.

Finally, Part Six of the study lists and explains a number of recommendations based on the information and analysis presented in the previous parts. It provides that the EU should establish a comprehensive monitoring of media freedom statuses, contexts and related risks; it needs to carry out impact assessments of the legal frameworks before introducing them and to develop a country tailored approach. The EU needs to support capacity building for all stakeholders, including regulators, journalists and especially

investigative journalists, journalistic organisations and unions, and watchdog non-governmental organisations (NGOs); it needs to demand and facilitate mechanisms for a guaranteed high level of transparency regarding media ownership and funding. Last but not least, the EU should follow an integrated approach and program in the area of media freedom assistance, as well as co-ordinating further its efforts and programs with the CoE and OSCE.

1. OVERVIEW OF MEDIA FREEDOM AND MEDIA PLURALISM IN THE COUNTRIES OF THE WESTERN BALKANS

The transition to media freedom in the Western Balkans carries the signs of the general post-communist transition. The expectations of speedy and beneficial outcomes from the transition are based mostly on the perception of easily exportable positive institutional and legal models, as well as on the liberalised media market (Hrvatín, 2013). However, they clash with the slow and problematic transformation of the institutional capacity and political culture, which are necessary elements for making the legal framework and institutional models work. This clash is replicated in the area of media freedom, with the relatively quick establishment of a satisfactory legal framework, while the implementation of this framework remains problematic. The additional challenges that the Western Balkans face during the transition years, namely the need for nation building (in some countries), post-war conditions and inter-ethnic tensions, are only additional contributing factor to the current media freedom deficiencies.

Despite the change from the media being state propaganda machines and the ultimate voice of a single party (Lani, 2005) to the abolition of state censorship of media, significant illegitimate dependencies between politicians and the media remain, as well as shortcomings in the implementation of the democratic and professional standards regarding media freedom. Unlike the explicit political pressure and censorship of the past, the current political and economic pressures are much more subtle and covert, which does not necessarily diminish their efficiency, but makes their identification and the fight against them much harder. These negative practices manage to persist within a generally good legislative framework, using loopholes in this framework as well as the underdeveloped political culture and institutional capacity. They are also fostered by the lack of general political and social transparency and the weakness of the underdeveloped small media markets in the Western Balkan countries. The context in which journalists work can often be characterised as a choice between working under political or under economic pressure (Nikolchev, 1997). Our study reveals that these two types of pressure are usually related and they do limit media freedom and media pluralism in the Western Balkan countries.

Countries in the Western Balkans are at different stages of their EU accession path. Regardless of this, they all share challenges and problems in the area of media freedom that are of the same character, although with different intensities. Some of the most important ones are related to the political interference and parallelism (Voltmer, 2013). However, not all media freedom shortcomings can be attributed to the political powers. The low level of journalistic professionalism (not necessarily low level of formal journalistic education) is rather widespread in the region and includes lack of observing of codes of ethics, and even journalists and editors willingly entering into hate speech and corrupt schemes (Igric, 2011).

1.1 Media Freedom and Pluralism

There are consistent concerns about the level of media freedom in the countries of the Western Balkans. These concerns are reflected in various international studies, including the latest Progress Reports of the European Commission. Despite the positive developments in the general legal framework of media freedom in the Western Balkan countries and its progressive alignment with the European norms and standards, problems persist due to issues with the application of the legal framework, frequent changes in regulation and lack of institutional capacity. Many laws have been amended and brought up to date with the consultative assistance of international organisations. However, the countries experience significant challenges in the proper application of these legal frameworks (Scheuer, 2011) and more efforts in the consulting, monitoring, and assisting the application of the legal framework are necessary. As a consequence, it is very often the case that the media appear to be formally unrestricted, but they are not really independent and cannot enjoy their formally acknowledged freedoms. The positive fact of an improved legal framework is overshadowed by its problematic application throughout the region. Some of the persisting key problems for media freedom in the Balkans are political pressure, illegal state subsidies, which sometimes come as state advertising, and are reinforced by the general economic crisis, and intimidation and lack of security for journalists (Economist Intelligence Unit, 2010).

A major concern related to media freedom in the region is political interference with the media and in their editorial policies. This concern is mostly based on the questionable and non-transparent financial dependencies of media outlets, the overwhelming share of state aid and/or state advertising in media funding and its arbitrary distribution. The ownership of the media is also a rather worrisome area, with a general lack of transparency and often obscure and clientelistic relations, or overlaps between political powers and media ownership. These aspects of media ownership and financing distort the media market and diminish the opportunities of media outlets to be competitive and sustainable without entering into relationships of dependence with the political powers. Often the political and economic pressures are intertwined and create informal power relations with the media (Erichsen et al., 2013). The lack of well-functioning procedures ensuring media ownership transparency allows for such informal, and often illegitimate, relations between business and politics to exist. The informality and interconnectedness of different stakeholders, together with the lack of a strong democratic political culture and traditions, make it difficult for the legal framework to be fully efficient against the trespassing of legal norms. On the one hand, the 'unholy alliance' of politics, business and media, places the media between the (often coordinated or connected) pressures of business and politics. However, on the other hand, the media can sometimes be seen as voluntarily entering into such a clientelistic position (Lani, 2011) due to a lack of well-established professional norms and principles.

The current economic climate makes the media especially vulnerable to financial pressure. In addition, the interconnectedness of business and political entities makes it very hard for the media to find alternative sources of funding, which are not related to or dependent on the political powers. It is therefore hard for the media to rely on a truly free market to sustain their editorial independence and impartiality. This threat is especially valid for the local media, as well as for the minority language media, which are structurally based on smaller audiences than national media. Consequently, they are more dependent on state funding that creates, or threatens to create, political dependencies.

The other channel of political pressure is the lack of guaranteed independence and the tendencies towards strong politicisation of the media regulatory bodies. This channel is used with different intensities in the respective countries, but there are concerns about it throughout the region. A major concern is also the pressure on the public service broadcasters (PSBs) that suffer a lack of economic and political independence and are conditioned by the influence of political power, exerted through cases of direct funding allocated to the them, as well as through a strong control over their governance mechanisms and procedures.

Another major concern related to media freedom in the region is the lack of efficient and reliable protection for journalists, which diminishes media freedom. The two most important threats to journalists are: (1) intimidation and pressure from political and economic actors (including physical abuse in some cases); and (2) violation of their labour rights by the management of their own media outlets. The lack of a speedy, efficient, impartial and media-savvy judiciary, and the lack of strong journalistic unions exacerbates this threat on media freedom. Some attempts at judicial capacity building and strengthening and activating journalistic organisations have emerged, especially in certain countries, but there is much work to be done in this area.

Despite the economic crisis and the slightly diminishing number of media outlets in some countries in the region, there are still indications of media market saturation. However, this large number of media outlets can be characterised as presenting a false image of media pluralism. The lack of independence of many of these media outlets, the concentration and the interdependencies of the major sources of media funding (and sometimes even media ownership) raise serious doubts about the outcome of pluralistic sources, opinions and points of view represented in the media. The lack of transparency of media funding and media ownership casts a shadow on this. It is also related to the political bias and favouritism in reporting, which serves the political and/or business interests of the media owners and/or fund-providers. The (over)saturation of the media market itself is seen as a cause for the presence of predominantly weak media outlets and, consequently, the practice of producing shallow and trivial media content instead of investigative and in-depth analytical content. Many media outlets recycle each other's products or use the same easy-to-reach information source, which results in an unsatisfactory level of pluralism in the information provided by the numerous media outlets. In addition, the PSBs independence falls below expectations throughout the region, despite the good overall legal and regulatory frameworks.

An important aspect of media pluralism in the region is the diversity of languages, reflecting the ethnic heterogeneity of most countries in the region. This specific issue in the region has attracted international attention and currently, it can be observed that ethnic representation in the media and media in minority languages are relatively well developed.

1.2 Legal Framework and regulation

Starting from the Constitutional level, the legislation of the Western Balkans countries is formally well structured and developed, mostly according to the predominantly used standards of European institutions, such as the EU, the CoE and others. This is the result of the deep process of implementation that the countries of the region are going through in order to fulfil European standards in their legislation. Besides the long-term influence of the CoE and OSCE standards, more recently the EU has played a pivotal role in influencing the shaping of the Western Balkan countries' legislation. The EU's political commitment to media pluralism and freedom is generally high, since these are both considered to be fundamental elements for the democratisation of the Enlargement countries. Nonetheless, the EU does not have a specific policy devoted to media in the area of the Western Balkans. Media freedom, as conditional for EU membership, forms only a part of the EU's enlargement strategy and, despite its importance for the democratic functioning of a country, is not necessarily the most central element of establishing compliance with EU norms.

The Constitutions of the countries examined generally guarantee a high level of protection for human rights and freedoms and provide specific articles that guarantee freedom of expression, freedom of the press and of the media, and, in some cases explicitly, the right to information (Albania, the former Yugoslav Republic of Macedonia, Montenegro). Moreover, all the states that are considered in this study except for Kosovo are members of the CoE and are formally applying the European Convention for Human Rights and Fundamental Freedoms (ECHR) that is part of national legislation. In some cases, the ECHR is recalled by the Constitution itself (in Bosnia and Herzegovina, as well as by the Constitution of the Entities). In most of the

countries in the region under consideration, the legal framework on defamation is very well developed and progressive: defamation was decriminalised in most countries according to CoE and OSCE standards. In Albania, defamation is still a criminal offence, but has constituted a misdemeanour since 2012 and it is no longer punishable by imprisonment.

Again, according to common European standards, the press media are not regulated while the audio-visual media are: in all the examined countries, specific independent regulatory bodies are established by law to supervise and 'govern' the broadcasting market and operators. PSBs are regulated by law, are asked to provide plural programs, have specific obligations in times of electoral campaigns, and are managed by formally independent boards. They are usually financed by licence fees and state aid, often through state advertisements.

On-line media are not regulated and fall under the general protection and limits of freedom of expression and freedom of the media. From a regulatory policy point of view, it is interesting to note that the recent attempt to reform media law in the former Yugoslav Republic of Macedonia according to the Audio-Visual Media Services Directive (AVMS Directive) standards was criticised as an attempt to regulate and limit press and Internet freedom.

Although the Western Balkan countries are generally characterised by up-to-date media laws and a formal market plurality, freedom of expression and effective media pluralism still remain a serious concern and challenge, because of the concentration of the power of interconnected political and business groups. This is a clear manifestation of the threat to media being subjected to political and economic pressures, as well as lack of protection for journalists against harassment or even violent attacks.

The dichotomy between good legislation and its implementation raises the issue of the effectiveness of the reforms that have been developed in the region and of the appropriateness of the method of juxtaposition of normative standards that have been developed in the Western countries in completely different economic, social and political environments, without any previous action on the structure of civil society.

The regulatory bodies in the Western Balkan countries are generally perceived as being weak, unprofessional, biased and dependent on the political powers (Erichsen et al., 2013). This perception is based, firstly, on the electoral procedures and practices of the members of these regulatory bodies. In most countries, regulators are either elected with simple parliamentary majorities, which makes them closely related to the ruling party, or with (informal) quota distribution between the big political players, which makes the overall membership of the regulatory body more diverse, but still politically dependant. Despite the formal presence of a nomination procedure executed by NGOs, academia and the industry, in some countries, the criteria of professionalism does not always prevail due to loopholes in this procedure, or to the political bias of the nominating organisations. Another problematic aspect of the election procedure and its implementation is the practice in some countries of leaving regulatory body positions empty, thus further weakening and undermining the legitimacy of these bodies.

Secondly, the negative perception of the regulatory bodies is based on some of their actions - or the lack of such actions - and/or on a double standard of judgments based on political bias. The key role that regulators play for the media sector elevates this to a fundamental problem. The lack of strong self-regulatory bodies and especially the financial weakness and dependence of the media sector on state funding and/or advertising reinforce the detrimental impact of the unprofessional and biased actions of these bodies.

1.3 Public Service Broadcasters

The independence of PSBs remains to be a critical issue in the whole region. In all states studied, the transformation of the former state broadcaster into a PSB is complete as far as the legal framework is

concerned. Nevertheless, there is a recurring failure to fully and properly implement the legal guarantees related to the independent governance of the PSB and PSBs are in fact hijacked by political elites and serving their needs (Voltmer, 2013). The journalistic culture of PSBs is often only partially changed; the link between political parties and the boards of the PSB remains strong. Even though the power to appoint the members of the governing bodies of PSBs generally belongs to the Parliament and not to the Government, the choice is usually left to simple majorities, which raises some concerns about the direct influence of majority parties over the PSB. It is also often the case that the elected governing members are politically affiliated figures who lack the proper competencies for the position. The central role of legislative power in the appointment mechanisms of PSBs' governing bodies can also be seen as a way not to involve the independent regulatory authorities, whose role could mitigate the direct influences of political parties.

Another reason for concern is the lack of sustainable and independent funding and the consequent dependency on the state budget. This creates a popular channel for governmental or other political interferences in the activities of the PSBs. The PSBs in the region use different sources of funding. Most of the countries adopt a licence fee as the major source of funding for their PSB (or PSBs), the only exceptions being Kosovo and Montenegro. Despite the significant differences in the amount of the licence fee, the countries, where this tax is implemented, experience the same problems regarding its collection, which is executed by the state or private companies. Subsequently, there is a need to co-finance the PSBs through the state budget.

Advertising is also an important source of financing for the PSBs, insomuch as in some countries limits for advertising airtime on public channels have been lowered recently; this was the case in Bosnia and Herzegovina and in the former Yugoslav Republic of Macedonia. However, it is important to note that throughout all the countries in the region, advertising paid for by the state is a major share of the overall advertising market. This creates a strong dependency on the government. The practice of having unclear criteria for state advertising funds is an additional basis for political pressure on the PSBs, as well as over the rest of the media outlets.

An additional source of income is usually provided by the sale of programmes and original TV and radio productions to third parties. However, due to the economic crisis, the number of productions is significantly decreasing, and this is having negative consequences for the financial viability of PSB, as well as for media diversity. In Montenegro for example, the funds that were used for original productions in several genres, such as children programs or documentaries, were abolished in 2008, thus lowering the average level of TV programmes and increasing homogenisation. The original productions of media outlets are, in some cases, also supported by state aid. Despite the concerns about the criteria for the distribution of state aid, it needs to be noted that in most cases this option is less problematic and more accountable than the distribution of state advertising.

1.4 Media markets

Most of the media in the region are privately owned; the owners are predominantly local entities, and foreign media ownership is rather limited. The presence of foreign media investors in the remainder of the post-communist countries has not necessarily contributed significantly to raised professionalism and media pluralism in these countries. The lack of foreign investments cannot thus be considered a direct threat to media freedom and professionalism. However, the lack of foreign investment in the Western Balkan media markets can still be seen as an indication of the underdevelopment and financial instability of the media outlets in the countries of the region.

Apart from the newly established private media outlets, private media have also emerged as a result of privatisation wherever the state owned media did not transform into public ones, especially in broadcasting. The privatisation process of the media in the region has stumbled upon some difficulties. In

Serbia, for example, the National Media Strategy is imposing the privatisation of the media sector (a final deadline is expected for 2014), but the agreed schedule is not followed strictly. In Montenegro and Bosnia and Herzegovina, media privatisation has proved to be largely inefficient or very complicated, with some national newspapers either sold to owners close to the political powers, or not privatised at all.

The official sources of private media revenues are mostly advertising, as well as the copies sold and subscriptions, in the case of print media. The presence of the state as one of the main advertising investors, though, raises concerns and is perceived as a possible threat to media independence. In many of the Western Balkan countries, the distribution of state advertising remains a rather biased, arbitrary and instrumental process, instead of being market and professionalism driven. An additional source of concern is the inability of media outlets to function sustainably based on advertising revenues and the lack of transparency for the sources of the remaining funding.

The media landscape is generally characterised by a high level of fragmentation. Media markets, especially the smallest ones, are rather saturated, but instead of bringing more diversity, the outcome of this process is a general dispersion that undermines the economic sustainability of private and commercial media outlets. The considerable fragmentation of the media market and the consequent low profitability levels, together with political instability and interferences, are indubitably unattractive features for potential foreign investors. The overcrowding of the media markets is also an indication of the lack of market logic behind the existence of many of the media outlets in these countries (Lani, 2011). This raises concerns of political instrumentalisation of the media in the region, either directly by political players, or by business players in their attempts to exert political influence.

1.5 Status of journalists

Throughout the region, journalism is not a licensed profession and a clear definition of the term 'journalist' is often missing from legislative documents. The lack of a legal definition of the profession could sometimes create a lack of clarity about who should be protected by journalistic privileges, but it also creates flexibility and the potential to accommodate the newly emerging on-line journalists and bloggers, or citizen journalists. In countries like Kosovo and the former Yugoslav Republic of Macedonia, a legal definition of 'journalist' has recently been introduced.

Journalistic self-regulatory organisations, and especially journalistic unions, are very weak or even functionally non-existent. Consequently, the respective Codes of Ethics for journalists are not rigorously implemented (if at all) (Lani, 2011) and the employment rights of journalists are not properly defended. Journalists throughout the countries in the Western Balkans endure underpayment, irregular payments and, recently, an increasing trend in refusals to be officially contracted, or being contracted for only part of their work. These conditions make them economically vulnerable and less able to resist pressure from their management or interested parties. Their low economic status makes the profession less attractive to well-educated people, and this harms the professional community in the long-term. In addition to their low economic status, the perception of the media as politically biased harms the reputation of journalists' profession.

The level of professionalism in the Western Balkan countries is considered generally low. The main reason for this is the failure to follow professional principles of ethical and responsible conduct. To a large extent, this can be attributed to the political and economic pressures to which journalists are often exposed, but there is also a lack of proper journalistic qualifications, even if this is only a secondary reason. The political and economic pressures on journalists appear both in the form of external pressures, coming from those whom the journalist exposes in his/her work; and as internal pressure, coming from the official, or non-official, owners of the media who often have vested political interests. As a result, journalists in the Western Balkan countries often feel that they are not well protected against pressure. This is further reinforced by

the frequently inefficient court proceedings in cases involving journalists. Another serious issue in the region is that journalists still suffer from physical threats and violations against them, and there have even been cases of killings. In certain cases, for example in Serbia, journalists who had received serious threats based on their journalistic work are put under constant police protection, instead of proper investigations being conducted. Thus, their life is protected, but also their journalistic work is blocked or made much harder due to the constant police escort they have.

2. COUNTRY PROFILES

2.1 Countries candidates for EU membership

2.1.1 Albania

1. Legal framework and regulation

The current Albanian Constitution guarantees the freedom of expression and freedom of media. The Constitution prohibits prior censorship of the media, but the law may require the granting of authorisation for operating a radio or a television station. The Constitution guarantees also the right to access to information, meaning that every citizen has the right, in accordance with the law, to acquire information on the activities of state bodies and persons exercising public functions. The Constitution also forbids hate speech. Based on some deficiencies in the Law on Access to Information, a group of civil society organisations requested that it be amended in 2009, but their request was rejected by the Parliament.

Since the fall of communism, Albania has established a tradition of strong self-regulation of the print press and consequently, the legal framework regulating print media is not very substantial. The Law on the press contains only two provisions: "The press is free. Freedom of the press is protected by law" (Ibrahimi et al., 2001). The outcome of this very general regulation is that "newspapers and print publications in general do not need to be registered. This totally relaxed policy contributes to a greater difficulty in knowing the exact number of publications at any time" (Londo, 2013a). Unlike the broadcasting, the print media are subject only to self-regulation.

It should be noted that self-regulation has prevailed over regulation only in regard to the print media. Broadcast media have been regulated since 1998, when the first law was approved – the Law on Public and Private Radio and Television. This law covers the regulation of both commercial electronic media and public service broadcasting. The law on Digital Television was approved in 2007: this law kept several of the basic requirements of the Law on Public and Private Radio and Television. Nevertheless, after long debate, in 2013, the Parliament approved a new law to regulate broadcasting, public television and content – the Law on the Audio-Visual media in the Republic of Albania, aiming at implementing the AVMS Directive. (Londo, 2013b). The law was criticised, because it fails to provide a proper procedure for the election of the board of the AMA (Audio-visual Media Authority), allowing for political control over the audio-visual media and not guaranteeing its independence.

Regarding media, the Election Law states that, during the month of the campaign, television time should be balanced in news coverage on all television and radio outlets. However, the two main parties are allocated twice as much television time as the others. During the electoral campaigns, a Media Monitoring Board is formed at the Central Election Commission, which monitors television time. If broadcasters do not respect the law, then they are fined with a rather small fine. This board is composed of 7 members who represent the parliamentary parties, and it does not sufficiently defend the rights of the newly established or smaller parties. There are strong claims that the political balance of media representation is not reached, including in the PSB. This arrangement does not include the print press.

In March 2012, the Criminal and Civil Codes were amended and the prison sentences for libel and defamation were abolished. However, these offences still remain punishable by high fines under the Criminal Code (European Commission, 2012b) and this is considered a potential significant cooling off factor for journalists (Lani, 2013). After the Democratic Party came to power in 2005, the Prime Minister asked all members of the public administration not to sue any journalist, including for defamation. The new government (since 2013) has approved a Ministerial Code, which states that ministers should not sue any medium or journalist without having the Prime Minister's approval, and the Prime Minister can discharge a minister, if he/she does not respect this code. Many journalists have criticised this Code as a way of silencing the Ministers and as a tool for less transparency. This policy of abstaining from legal cases leads to a strong limitation in the number of defamation cases against journalist, but it is not a sustainable formula and only a preference of a given prime minister.

The main media regulatory body is the AMA, which replaces the previous regulatory authority, the National Council of Radio and Television (KKRT). This regulatory body has competences to issue licences and authorisations, require holders of licences and/or authorisations for financial obligations to AMA, ensures the implementation of the terms of licences and/or authorisations issued by AMA. It also undertakes, supports or authorises studies. The AMA manages its own funds (coming from fines, annual fee from licences and fees for services under legislation in power in order to have financial freedom, but also it can obtain funds from the Government Budget, according to the Law on Public and Private Radio and Television.

All five members and the Chairman of AMA are directly elected by Parliament with a mandate of 5 years, with the possibility of a second term. Even with the new law, the election procedure of AMA's members still raises concerns. Both majority and opposition give support and elect 3 members each, and the parliamentary majority elects the Chairman. According to the law, civil society is involved in proposing candidates to be AMA members. However, the procedure predisposes that the elected members will be the ones who get the party support. "Members of Parliament from the opposition and ruling majority respectively take turns in shortlisting expert candidates proposed by relevant associations and civil society. The seventh member, who is also the Chairperson of AMA, is also elected by way of shortlisting among four candidates, by a simple majority in the Parliament" (Londo, 2013b).

The regulation of the online sphere is rather liberal regarding its content. The law sanctions only content on genocide or crimes against humanity, as well as provocation of ethnic, religious or other hate, and the Chief Prosecutor has the competences and obligations to react accordingly, including collecting and accessing all relevant content (Londo, 2012). The regulation of the technical aspects is rather different. It requires any citizen to make a formal request in order to acquire a permit for a website by the Authority on Electronic and Postal Communication (AKEP), which is responsible for the technical regulation of online media (Londo, 2012).

2. Public Service Broadcasting

As for PSB, the Law on the audio-visual media states that Radio Televizioni Shqiptar (RTSH) should "promote Albanian culture and language, and artistic and literary creativity" (Londo, 2012); produce and broadcast freely accessible content, "related to national health and public order, as well as in cases of national emergencies" (Londo, 2012). The original production of the RTSH should constitute at least 50 per cent of the programs broadcast (Londo, 2012).

The procedure of electing the members of the Steering Council of the RTSH, its highest governing body, is similar to that of AMA, which reinforces the persistent problems with the impartiality of the representation of different political parties. The main competencies of the Steering Council include approving the RTSH Statutes; appointing and dismissing the directors of RTSH; "approving the strategy, organisational structure, and program structure; monitoring the impartiality, objectivity, and comprehensiveness of programming; advising and assisting the Director General in carrying out his program responsibilities; and drafting the annual report on RTSH activities for submission to Parliament" (Londo, 2012).

RTSH is financed by licence fee in the amount of nearly 0.75 Euro per month for every Albanian family (not household). According to the Statutes, the RTSH may ask for additional financing from the state budget only for special occasions. The RTSH is also funded from several other sources: advertising (without restrictions on timing); various services for third parties, including video and audio productions; printed materials related to various programs; performances and shows; advertisements; donations and sponsorships; and the sale of RTSH programs (Erichsen et al., 2013). As for donations and sponsorship, the Council decides whether they can be accepted or not. However, these donations should be only for one production.

The public broadcaster, RTSH, as well as the regulator AMA, are formally independent from any political and/or corporate influence and have the mission to ensure media pluralism. As part of the aim for pluralism, the RTSH broadcasts part of its programming in Greek and in Macedonian for the ethnic minorities in the south and south-east of the country (Londo, 2012). However, there are serious and persistent concerns about whether this independence is functional. An OSCE Report regarding the last election on 23rd June 2013, has noted a serious problem with the balance of the RTSH coverage of the electoral campaign (OSCE, 2013f). "Although there has been debate on the unclear provisions of time allotment to political parties, and criticism of similar violations by the commercial media, the fact remains that the public broadcaster could not provide the due balance as set out in the Electoral Code" (Londo, 2012).

3. Media market - ownership, competitiveness, viability and independence

The major funding sources for media are the advertising revenues, which are characterised by lack of transparency. Other options for media financing are sponsorship and selling their own media productions. There are no legal provisions for state aid for the media. However, the state advertising and the way it is allocated have caused a persistent controversy over the past 15 years due to the lack of transparency in this process (AMI reports). The only state advertising distribution rule concerns newspapers and, according to it, the government should choose the two newspapers with the biggest readership. However, there is no reliable database on readership and therefore this rule is also very weak (Albanian Media Institute, undated). As a result of the current economic crisis and the shrinking of the advertising market, the broadcasters' funding share coming from advertising has also fallen from 58 per cent in 2009 to 30 per cent in 2010. The rest of their financing comes predominantly from the media owners themselves.

Over the last five years, Albanian media market enjoys bigger presence of major foreign media investors, including the Italian *Edisud Group*, the German *WAZ-Mediengruppe* buying local media (Londo, 2012). Neither the presence of big international media corporations, nor the local media owners have created a significant problem in terms of media ownership concentration, despite the notable trend in this direction

(Londo, 2012). A concerning level of media ownership concentration can be seen however, when looking at cross-ownership of different media platform, but the law does not address such cases (Londo, 2012).

Looking at the political tendencies of the media outlet ownership, it appears that there are alternatives on the Albanian media market. However, there are concerns that many media owners are involved in various business enterprises beyond their media companies and this often involves participation in public tenders. These economic cross interests mean that media independence is seriously threatened.

4. The status of journalists

The only definition of 'journalist' in Albania is provided by the Ethical Code, prepared by the Albanian Media Institute and generally accepted by editors in chief and academics. According to this definition, "journalists have the right to obtain information, to publish, and to criticize. Information should be truthful, balanced and verified". This definition is also relevant for online media. The Code of Ethics was created in 1996 and then revised and updated in 2006 by the Albanian Media Institute. Although there are no guarantees that the code is fully respected, it does have impact on the journalistic community in Albania.

The media labour market in Albania remains unstable, and journalists often work without contracts, provide unpaid extra hours, face delayed payment of salaries, which undermines their professional motivation and security. There is not a tradition of a strong and active journalistic union and the existing journalistic organizations are not very active or/and efficient in defending the rights of journalists.

According to the Albanian Media Institute's study of self-censorship and soft censorship in Albanian media, "nearly 90% of journalists are working without contracts and therefore owners can easily interfere, gradually bringing the self-control or self-censorship of journalists" (Albanian Media Institute, 2012). According to the head of the Albanian Union of Journalists, Aleksander Çipa, journalists in Tirana are paid between 300-600 Euro, and editors and presenters of programs are paid more. "The situation seems more difficult for journalists outside the capital, where, according to the Union of Journalists, about 60 per cent of journalists do not reach the average level of wages as determined by governmental standard" (Londo, 2012). Additionally, the general law on work insurance is not respected by media owners. According to a 2013 survey conducted by the Albanian Union of Journalists, more than 70 % of Albanian media fail to pay salaries regularly and delays vary from 2 to 6 months (Ndrenika, 2013). Also cited is a case of 48 journalists suing their publisher overdue salaries.

The level of professionalism remains generally low, despite some good examples, especially in TV. The lack of resources in the print press diminishes the professional quality there. Media outlets are often understaffed and journalists are often left to collect information and produce materials based only on phone calls or on official statements. Investigative journalism is very rare. The professional culture of journalists is still very close connected and strongly influenced by the non-democratic past of the country and journalists themselves need to get used to the professional ethics of media freedom (Elbasani, 2014).

2.1.2 The Former Yugoslav Republic of Macedonia¹

1. Legal framework and regulation

The freedom of expression, the freedom of speech, public address and the right to public information, as well as the establishment of institutions for public information are guaranteed by the Constitution of the former Yugoslav Republic of Macedonia. Free access to information and the freedom of reception and transmission of information is also guaranteed. Censorship is explicitly banned. In considering the ethnic composition of the country, the Constitution also guarantees the members of ethnic communities the right

¹ The primary material on the former Yugoslav Republic of Macedonia was collected by Snezana Trpevska, School of Journalism and Public Relations, Skopje.

to freely express, foster and develop their identity and national attributes and to use the symbols of their community.

In addition, the Law on Broadcasting Activity incorporates and guarantees these constitutional principles. Legitimate restrictions on the freedom of expression in the field of broadcasting are related to the prohibition of content aimed at the violent overthrow of the constitutional order, which encourages military aggression or incites national, racial, gender or religious hatred and intolerance, as well as programs that may cause serious damage to the physical, mental and moral development of children and youth. Libel and defamation were decriminalised in 2012 with the adoption of the Law on Civil Liability for Defamation and Insult.

In 2012, the Government initiated a process of introducing new media legislation on the print media as part of the harmonisation with the new EU AVMS Directive. However, the first proposed versions of the draft Media Law contained provisions to encompass print and the online media sector in media regulation, and to establish a new media authority that would have competencies over the entire media sector. This initiative raised many concerns among the professional and expert community in the country, as well as amongst several international organisations, that the new Media Law would restrict media freedoms in the country (European Commission, 2013c). Decriminalisation of libel is usually hailed as a step to a more effective form of freedom of expression and information. However, some legal experts and the journalistic community have reacted by suggesting that the provisions of the new defamation law may not improve the situation with regard to media freedoms, especially because the fines are extremely high if compared to the wages of journalists.

In 2006, the Parliament adopted a law on free access to public information, which is fully harmonised with the basic principles determined in international law. According to some analyses, regulation on the right to free access is still not fully implemented as many citizens and organisations have experienced difficulties in using this right. The Commission for Free Access to Public Information is still not independent and lacks, for example, sufficient capacity to perform its tasks.

The Election Code contains a separate chapter that regulates election campaigns and imposes obligations on the broadcast regulator to adopt specific codes on the broadcasters' conduct in the period before the official start and during the election campaign. The coverage of campaigns by the print media is subject only to self-regulation. A recent study, conducted in the first half of 2013 by an independent research team, showed that there were large imbalances, both in the quantitative and qualitative aspects of balanced reporting (UNESCO, 2013). "Professional standards for objective and impartial media coverage were endangered to the extent that some media news was used to directly manipulate the opinion of the electorate" (UNESCO, 2013).

The tasks and powers of the Broadcasting Council, as an independent regulatory authority, are fully aligned with Council of Europe Recommendation 2000 (23), but, in practice, the appointment and work of the members of the regulator were under strong influence from political parties, the Government and the media industry itself (Council of Europe, 2013). For example, the procedure for the nomination and election of members of the Broadcasting Council was carefully designed to ensure full transparency and to minimise political influence, mandating the so-called 'authorised nominators' to submit their proposals to Parliament, which appoints the members of the regulator without having the possibility to reject the proposal or to nominate other candidates. The authorised nominators were: the Inter-University Conference; the Macedonian Academy of Sciences and Arts; the Association of Journalists; and the Parliamentary Committee on Elections and Nominations. However, most of the appointed members are close to the ruling parties and, in general, this was assessed by the professional and expert community as partisanship in the regulatory body.

There is no specific law regulating on-line content, but if it is regarded as 'illegal' or 'harmful' it is subject to the Criminal Code and the above mentioned limitations to free speech, including mockery based on membership of a racial, national or ethnic group (which is subject to punishment by a fine or imprisonment of up to one year), as well as obscenity and sexually explicit material. Libel and defamation are outlawed by the Law on Civil Liability for Defamation and Insult. Internet intermediaries are not legally liable for the on-line content they distribute to the users.

1. Public Service Broadcasting

The normative transformation of the Macedonian Radio Television (MRTV) into a public service started with the first Law on Broadcasting Activity in 1997 and the transformation was entirely completed by the 2005 Broadcast Law. However, the real institutional transformation of MRTV was a difficult process, which has not yet been completed. The reasons for this are complex and lie in the problems of the entire post-communist transformation of the political system. Editorial independence is guaranteed under the law, but this is insufficient to provide actual independence, due to the inexistence of independent funding over the years and the insufficient independence of the MRTV management bodies. Almost all of the Executive Directors at MRTV in the period after 2005 were people close to one or other political power, and did not make significant progress in the transformation of MRTV towards it becoming a public service broadcaster (Macedonian Institute for Media, 2010).

The Council of MRTV is the highest supervisory body, and its members are appointed by the Parliament on the proposals of authorised nominators from civil society. The MRTV Management board members are elected by the Council of MRTV. Although the model of MRTV management and supervision, as defined in the law, guarantees certain autonomy for its bodies, it is still characterised by serious shortcomings. The MRTV bodies are not adequately set up, and are burdened by numerous decision-making levels and an inadequate allocation of authorisations. Although the MRTV, in accordance with the law, is accountable only to the legislative power (annual reports, financial plans, etc.), the practice of direct communication and the informal accountability of the MRTV management to the representatives of the executive branch of power, has remained a practice. This has further undermined its institutional autonomy and editorial independence (Macedonian Institute for Media, 2010).

Other concerns about the PSB's functioning are related to certain neglected cultural pluralism obligations, especially with respect to the programs of smaller ethnic communities (Micevski et al., 2013), to lack of impartiality in presenting political information and to distance from the government and politicians (UNESCO, 2013).

The public broadcaster is dominantly funded by the licence fee, but it also receives significant funds from the state budget due to the inefficiency of the tax collection system. PSB also receives advertising revenues, but the advertisement airing times are restricted, which has significantly reduced this source of funding (up to 10%). However, with the new Law on Audio and Audio-Visual Services, the restrictions will be relaxed and will allow for more advertising revenues for PSB. Over the years, the practice of continuous funding from the state budget has created a culture of dependence in PSB, as the budget funding was received both based on legal provisions and as ad-hoc budgetary funding.

2. Media market ownership, competitiveness, viability and independence

The main source of funding for commercial media is from advertising revenues. However, this also includes funds from the state budget, through the so-called 'public campaigns', or Government advertising and that for other state institutions. Over the last several years, state advertising in the media has increased significantly, putting the Government amongst the top five advertisers (Broadcasting Council of Macedonia, 2013). This inevitably affects both fair market competition and the editorial independence of the media. The

state advertising is aired only on commercial broadcasters, while on the public service the public campaigns are broadcast marked as free airtime.

The huge number of media outlets, combined with the weak advertising market, results in economically weak media that find it hard to maintain independence. This financial weakness also affects the quality of programs and the professionalisation of journalists. Most of the advertising revenues flow into the television industry, especially into the national terrestrial ones, while radio, print and on-line media are much weaker media sectors (Broadcasting Council of Macedonia, 2013). This is a consequence of the enormous fragmentation of the media market, which is a result of complete liberalisation and of later market fragmentation as a result of regulatory policy. Currently, the fragmentation is driven by technological development and digitalisation (Broadcasting Council of Macedonia, 2013).

As a result of the long term financial and production-technology crisis, the PSB has greatly neglected its obligation for cultural pluralism in its programs, especially regarding the programs of smaller ethnic communities, where the under-resourcing is even greater. The lack of uniform and clearly defined principles of programming towards an inclusive society and social cohesion is a serious problem (Micevski et al., 2013). The lack of pluralism, as well as political influence, was reflected in the coverage of the local elections in 2013, which was characterised by the over-exposure of the Government's work and full PSB obedience to the ruling party, especially during the final stages of the campaign (UNESCO, 2013). The lack of media independence is also criticised by the media in Albanian language, but one should emphasise that "the position from which these media criticise the government is different from that of the media in the Macedonian language. Their critic is mostly from the position of the ethnic community to which the newsroom belongs" (UNESCO, 2013).

During the period 1994-1996, the only state print publishing house, *Nova Makedonija*, had to be privatised. However, this process ended unsuccessfully and all its print outlets disappeared from the media scene. At the same time, several private print media were established and the arrival of the media concern WAZ, in 2003, made it the only big foreign investor in the former Yugoslav Republic of Macedonia (Trpevska, 2004). Consequently, this led to a large concentration in the print media sector and, at the end of 2003, the share of WAZ's three print dailies rose to 90% of the annual income of all print dailies in the relevant market. In 2012, WAZ withdrew from the former Yugoslav Republic of Macedonia and sold its three print outlets to local private companies and individuals. The three print dailies still exist in the market, with the same editorial profile, but with reduced circulation as a consequence of the deteriorating market.

Despite the rigorous and detailed legislation concerning media ownership and media funding transparency, and despite its relatively good application, there are still concerns about the capacity of these efforts to guarantee real transparency. The principal concern is the phenomenon of 'hidden ownership', which remains non-transparent with the current legislation. It hinders media pluralism and independence since the (real) owners are suspected to be affiliated with political parties (ruling or opposition ones) and are pursuing their business and commercial interests (Regional Cooperation Council, 2013).

In 2004, the media market was characterised by illegal media concentration, media in the hands of businesses or individuals close to political parties, severe and unfair competition, media polarised along ethnic lines, political pressures over the regulator, a weak journalists' association, the weak and unprotected labour status of journalists, blurred professional values – all of this has characterised the fragile social context in the years since the armed conflict in 2001. With the new Broadcasting Law from December 2005, the regulator was legally obliged to strategically plan and implement its broadcast policy to accomplish the democratic, cultural and economic regulatory goals incorporated in the new legislation. However, the follow up regulatory decisions replicated the existing pattern of ownership structure on the national level and, in addition, new media owners with political affiliations entered the TV market. This situation

transformed the media sector into a real battlefield for gaining more political influence and for grabbing more profit from the scarce advertising resources.

The subsequent significant increase in TV advertising revenues (Broadcasting Council of Macedonia, 2008, 2009) is a result of the TV market fragmentation as well as the rise in state advertising between 2004-2009. Consequently, the battle between the media tycoons intensified.

3. The status of journalists

The currently discussed Draft Law on Media states that a “journalist is a person who performs activities of collecting, analysing, processing, shaping and/or classification of information published in the media and who is employed in a medium or publisher, and has signed a contract with the same, or who is a person engaged in a business as an independent journalist (freelance reporter)”. Although currently being debated, this definition does not take into consideration the newest trends in journalism, especially the changes related to Internet proliferation.

Most journalists of the former Yugoslav Republic of Macedonia have a rather low socio-economic status as a consequence of the structural weaknesses in the media system. Their basic employment and social protection rights are not recognised or are significantly reduced. Most journalists are poorly paid (the average wage of journalists in the country is about 250 euros per month, and the average wage in the country is 350 euros) and they have no employment contracts. There are even cases of journalists signing a contract simultaneously with a resignation letter, which could be activated whenever the media owner found it appropriate (Trpevska, 2013).

There is still no self-regulatory body in the former Yugoslav Republic of Macedonia and the Association of Journalists (AJM), together with the NGO, the Macedonian Institute for Media, are working on establishing one. In 2010, the formation of a Council of Ethics in Media was initiated as a tripartite self-regulatory body composed of representatives of editors and journalists, media owners and representatives of civil society in the former Yugoslav Republic of Macedonia. The Independent Union of journalists is a very weak organisation that lacks stable resources and a strong membership base. Additionally, joining the trade union is seen as unacceptable at many media outlets, forcing some journalists into secret membership. More than 20 union members and activists, including its President, were fired (Radio Free Europe, 2011), or are at risk of losing their jobs or of being downgraded. The Independent Union, and other journalists’ organisations, warn that forms of pressure on journalists are very frequent and vary: from the marginalisation (or in several cases even firing or not renewing contracts) of journalists who think critically of governmental structures, to ‘redirection’ or ‘reallocation’ of individual journalists across different media.

The Code of Ethics of the Journalists of Macedonia is complemented with several smaller explanations of the Code on different topics (reporting diversity, reporting inter-ethnic and interfaith topics, etc., reporting on corruption, etc.). Nevertheless, there are still serious problems in journalism of the former Yugoslav Republic of Macedonia in relation to the violation of the basic standards for impartial, accurate and balanced reporting, which is evident from many research projects conducted by the academic community or by non-governmental organisations (Shopar, 2013). This is especially evident in the use of vague references to sources of information. The use of judgmental labels, the biased choice of different political actors and positive or negative framing are very frequent in the coverage of many topics, especially in the period of election campaigns (UNESCO, 2013). Journalism in the former Yugoslav Republic of Macedonia is predominantly focused on providing exposure for political élites, especially the government. Political sources, in the public service, in most cases are members of the ruling political parties, while in some of the commercial media there is a greater presence of voices from civil society, but this is far from sufficient. There is almost no investigative and analytical journalism, the coverage is limited to the pure transfer of information about events that are mostly organised by politicians or the Government, and the media are

rarely ready to open and to analyse other aspects of the event, or to include the views of citizens (Micevski et al., 2013).

Under the constitutional and statutory laws, journalists are protected from being compelled to testify about confidential information or sources. Firstly, Article 16 of the Constitution guarantees the confidentiality of journalists' sources. The 2005 Broadcasting Law also contains provision that guarantees the confidentiality of sources of information used in the programs aired by broadcasters. Most of these provisions are fully respected in court practice, i.e., there has been no court procedure against a journalist where the court formally requires that he reveal the name of the source of information.

2.1.3 Montenegro²

1. Legal framework and regulation

The general Montenegrin legal framework ensures formal conditions in respect of media freedom and pluralism. It includes the basic elements and aspects relevant to the functioning of a free and pluralistic media system. The Montenegrin legal framework is well structured, the level of protection of media freedom is formally quite high and institutions are committed to interpreting the laws according to European standards of human rights (Latifi, 2013).

The Constitution of Montenegro guarantees freedom of expression and specifies that this may be limited only by the rights of others to dignity, reputation and honour, or when it threatens public morality or the security of Montenegro. Newspapers and other mass media can be established without approval, by registration with the competent authority and only broadcasters need a registration licence. The right to reply and the right to a correction are guaranteed, censorship is prohibited and people have a right to free access to information that is held by public institutions. However, media distribution can be forbidden if there is a need to keep public order, to protect the territorial integrity of the country, to prevent war, violence, racial, national or religious hatred or discrimination.

Besides the Constitutional principles, other relevant laws include the Law on Media, the Law on Electronic Media, the Law on the Public Broadcasting Services of Montenegro, the Law on Obligations, and the Law on Access to Information. However, there are concerns about the rigorous implementation of these laws, for example, the deadlines for answering freedom of information requests are often breached and a large number of public bodies have not started to proactively inform the public about their work. In Montenegro, defamation was decriminalised by amendments to the Criminal Code in 2011.

When it comes to political and electoral communications, the Electoral Law stipulates the obligation of commercial media to ensure equal conditions for the promotion of electoral rivals during the election campaign. The Radio Television of Montenegro (RTCG), the country's PSB, is obliged to inform the public about the election contenders daily and for free, dedicating to each candidate an equal amount of time. Although the PSB met the legal obligations to provide free airtime to the candidates on equal terms, unbalanced reporting of government officials' activities in its news programs - with no clear distinction between state activities and party campaigning - was also present (OSCE, PACE, 2013). The print media were also found by the OSCE to be biased, often along party lines.

There are two regulators in the electronic communication sector: the Agency for Electronic Media (AEM) and the Agency for Electronic Communications and Postal Affairs (EKIP), which both have rather wide tasks and powers. The responsibilities of the AEM include issuing broadcasting licences and monitoring of the implementation of the Law on Electronic Media and related by-laws. EKIP's competencies cover the resolution of the electronic communications market, consumer appeals, and counteracting dangers to

² The primary material on Montenegro was collected by Milena Milosevic, Balkan Investigative Reporting Network.

media market competition. Their structure consists of a Council, a Council's President and a Director, who should not have been involved in political representation or the government. Although they are defined as independent regulatory bodies by law, with precise and detailed definitions of potential conflicts of interest for their representatives, these two agencies are not entirely independent from political powers. Their Councils, which are in charge of appointing their Directors, are appointed by a simple parliamentary majority, and thus, in practice, by the ruling coalition with no specific quotas for the opposition. In general, legal provisions make Ekip more susceptible to political interference. The new Law on Electronic Communications, adopted in July 2013, contains a controversial provision, which allows Parliament to automatically dismiss the head of Ekip's Council and its members if it does not adopt the agency's operational and financial reports. Some of the criteria for dismissal of the Council's President and members also remain vague, since terms such as *negligent or reckless conduct* are used.

The Law on Electronic Media treats electronic publications as web pages or portals, which contain electronic versions of print media or information from the media available to the wider public. The Law on Media also defines 'media' widely enough so that electronic publications can be read into the definition. Hence, all the provisions and standards regulating media content are also applicable to web pages and portals (Latifi, 2013). Electronic publications, however, do not require licences or broadcasting licences. With regard to internet intermediaries, e.g. domain name registrars or search engines, there is no special law that regulates their work, but they are within the scope of the Law on E-commerce. There is currently a proposal for a legal amendment, which envisages that intermediaries that only provide access to the communication network or ensure only mere data transmission by the service user through a communication network cannot be held responsible for the content that is shared.

2. Public Service Broadcasting

The Montenegrin PSB is regulated by the Law on Public Radio-Diffusion Services, which defines its functions as serving the interests of all of the people in Montenegro, regardless of their political, religious, culture, racial or gender affiliation. The main governing bodies of the RTCG are the Council and the Director. The nine-member Council is appointed by simple parliamentary majority and is composed of experts proposed by civil society organisations. There is a clause preventing conflicts of interest of the Council's members, whose main tasks include appointing the Director General of the RTCG and advocating in the public interest. However, the OSCE and the Parliamentary Assembly of the CoE (PACE) recently expressed concerns about some of the civil society organisations that were included in the Council. Since they were beneficiaries of state funds, they were not independent from a certain bias (OSCE, PACE, 2013).

The public addresses and personal websites of the Council's members from the non-governmental sector have a positive effect on transparency and the overall work of the public broadcaster. However, the RTCG is still largely perceived to be dependent on the Government (AIM and Methodology of the Research, 2012), especially after the dismissal of an RTCG journalist after he had attended an anti-government rally in 2011. The RTCG does not pay a broadcasting licence fee and is financed through contributions from the State budget (1,2% of the budget) and advertising revenues for time-limited advertising coverage (in comparison, the commercial media are not under these time limitations for advertising coverage), as well as revenues from sales of audio-visual works and sponsorship. However, its finances have been troubled over recent years and it was even in danger of bankruptcy in 2012.

3. Media market - ownership, competitiveness, viability and independence

Despite the legal requirement for electronic audio-visual media to inform the regulator (AEM) about its ownership structure, there is no further requirement (or practice) to inform the public about media ownership and any changes. Reports indicate that this procedure is not properly implemented and consequently the public is familiar only with the fictive owners of certain media. Information about the

natural persons and legal entities, which are the official founders or owners of the majority of media outlets, is publicly available. However, this is not the case for foreign-based legal entities that are founders or owners of Montenegrin media, which creates loopholes for potential abuses.

Media companies are generally funded by advertising revenues, the media's own productions and some other sources. The Law on Media also envisages that significant state aid funds can be distributed to the media for productions, for the development of science and education, culture and for informing people with impaired hearing and/or vision. State aid is also used to encourage media production in the languages of the national minorities. In its 2012 report, the Commission for the Control of State Aid, a body appointed by the Government to control the implementation of the Law on State Aid, found no irregularities in the distribution of state money to media outlets (Commission for the Control of State Aid of Montenegro, 2012).

Another source of state funds distributed to the media however, raises more concerns, namely state advertising. The research conducted by the NGO Centre for Civic Education concludes that there are no clear-cut criteria according to which the state administration bodies choose particular media outlets for advertising (Centre for Civic Education, 2013). For example, available data highlights that in 2012, the daily newspaper *Pobjeda*, which is majority owned by the state, took over 89 per cent of the money spent by Ministries for advertisements in print media. The official web-portal, containing all the public procurement contracts and bids, does not deliver reliable results about the state's advertising in all media outlets. This leads to the conclusion that the public procurement law is not properly applied with regard to advertising services, although these services are not exempted from the scope of the law.

The distribution of state advertising has become especially important with the current economic crisis and the consequently deteriorating economic viability of media outlets, especially the private ones. The most notable example of the financial downturn was the private IN Television, which, despite its national coverage and previously having the most viewed informative programme, was closed in 2012. The economic crisis had an especially negative impact on the local media in the north of the country, which is the least developed region.

In general, the proliferation of media on a small market, such as the Montenegrin one, poses a lot of difficulties for their economic survival. Electronic media seem to be more strongly affected by the economic crisis, also because of the broadcasting fees (IREX, 2013a) and having higher production costs. According to the financial report of the AEM for the period between January and July 2013, this regulator signed a protocol on restructuring the debts of 16 radio and TV broadcasters, which is valid until the end of 2013 (Agency for Electronic Media of Montenegro, 2013). However, the regulator will probably need to undertake harsher measures, such as court-ordered debt collection, which, ultimately, may lead to media closure. Nevertheless, media outlets such as *activeradio* are allowed to work, despite their huge debts. This raises concerns over alleged favouritism in the media, with some outlets still operating although they have failed to pay the legally-binding fees. Consequently, the media outlets that are striving for economic survival are more susceptible to pressures from certain business and political circles, which are, to a certain extent, overlapping or interconnected. As the 2013 Media Sustainability Index for Montenegro (IREX, 2013a) suggests, the overall economic circumstances in which the media operate drive a trend towards self-censorship by editorial boards and newsroom staff.

The 2003 media reform planned a transformation of the state- and local administration-owned electronic media into national and local, public or private broadcasters. However, this transition is perceived to be inefficient. For example, the national daily, *Pobjeda*, is still state owned, contrary to the Law on Media, which envisaged that all state-owned media would be privatised by mid- 2004. This is due to a lack of interested potential investors. It has also been reported in the past that a minority stake in the shares of *Pobjeda* was held by a company associated with Darko Saric who is alleged to be the leader of a powerful Balkan criminal organisation (Dojčinović, 2011).

There is the impression that the private media with a foreign ownership share are more critical of the government, contributing thus to diversification of information on the work of public officials. Yet, the media market has not been very attractive to the major foreign-owned companies, and such investors are missing or leaving the market. In general, there is a perception that the Government's interference is higher when it comes to the work of the public broadcaster (AIM and Methodology of the Research, 2012), but the private PINK M television has also been accused of serving the interests of the ruling coalition.

4. The status of journalists

There is no definition of a journalist within the relevant media legislation or in the Code of Ethics. A journalist is assumed and perceived to be any person working for the media (as an employee or free-lancing) and producing information or materials which are subsequently published and broadcast by media outlets.

Journalists' jobs are not stable and even the Prime Minister acknowledges that some media tend to report lower salaries in order to cut taxes. Consequently, parts of their salaries are not transferred via bank accounts or any other transparent accounting, which makes their income non-transparent and figures unreliable. In general, their total (gross) salaries are less than 500 euros per month on average, which is, in practice, less than the net national average wage, which was 475 euros in August 2013 (MONSTAT Montenegro's Statistical Office, 2013). For some of those at the start of their career, their monthly income is only 200 euros (IREX, 2013a).

Personal security is also low, due to frequent attacks on journalists and the media - a problem, which despite some efforts remain largely unsolved³. A positive development with regard to the status of journalists was the formation of the trade union for media workers in May 2013. The union is a member of the Association of Free Trade Unions, which, together with the Alliance of Independent Trade Unions, is the major umbrella organisation for unions in Montenegro.

The Journalists' Code of Ethics was formally signed in 2002, but it is not sufficiently aligned with new trends in the media market, especially in terms of on-line content. Officially, there are five self-regulatory bodies in the country (Vukovic, 2013), three of which were established in 2012. Nonetheless, according to the report by the NGO Human Rights Action, only three self-regulatory bodies are active: the Media Self-Regulation Council, the Self-regulatory Local Press Council and the TV Vijesti Ombudsman, established in 2013 (Vukovic, 2013). The most active self-regulatory body, the Media Self-Regulation Council, publishes reports, decides on appeals, and pledges itself to be a mediator between the customers and media, even in cases when the media are not its members, which is not in line with the self-regulation principle. There are concerns that this body functions with certain political biases.

The level of professionalism and the professional conduct of journalists in Montenegro are considered to be generally low. Media tend to breach the principles of the Code of Ethics and media legislation, especially in terms of their lack of respect for the presumption of innocence, the prejudging of outcomes of trials, misleading titles, and poor treatment of their competition. The reporting of certain media outlets about other outlets is often against the Law on Media, which forbids commercial broadcasters from discrediting and belittling their competitors. Media reports are also rarely balanced, meaning that they fail to give an opportunity to the persons featured in the media reports to state their own views.

According to Article 21 of the Law on Media, reporters are not obliged to reveal to authorities the name of a source, if he/she wants to remain anonymous. However, the Code of Journalists' Ethics is not aligned with

³The 2004 murder of Dusko Jovanovic, former Editor-in-Chief of the daily *Dan*, has not yet been resolved. One of the most recent attacks on journalists was on Tufik Softić, a journalist who works with the daily newspaper *Vijesti* and the weekly *Monitor*, in front of whose house an explosive device was activated in August, 2013.

the legal reporter's privilege, and it advises journalists to inform sources, who want to stay anonymous, that their personal details will have to be revealed, if it were deemed necessary for the outcome of a trial. There are also indications that the reporter's privilege is not fully respected in practice. For example, in September 2012, the Editor-in-Chief of the daily *Dan* was interrogated by the state prosecution for revealing state secrets and was asked about his anonymous sources on alleged corruption during the privatisation of the former state telecommunications company.

The current economic difficulties also have a negative impact on the journalists' job stability, with media closing down or laying people off. For example, the 2012 bankruptcy of TV IN resulted in job losses and unpaid salaries for former workers, who sued the company. Although they won in the final verdict, workers have still not received their salaries due to the inability of the company to pay its debts. In addition, the overall fear of job losses and the decrease in job availability in the media market has created further deterioration in the status of journalists.

2.1.4 Serbia

1. Legal framework and regulation

The Serbian Constitution provides the right to freedom of expression, which may be restricted only if the aim of the restriction is to protect the rights and reputation of others, to uphold the authority and objectivity of the court and to protect public health, the morals of a democratic society and the national security. Additionally, the Serbian Constitution provides that everyone shall have the freedom to establish media without prior permission. Television and radio stations are subject to licensing. Finally, the Constitution prohibits censorship to be applied in Serbia. The legal framework regarding media in Serbia consists of a Law on Public Information, a Law on Broadcasting, as well as a Law on Free Access to Information of Public Importance and a Law on Elections of the Members of the Parliament that regulates the covering of elections by the media, as well the Penal Code that, even though criminal defamation was abolished, stipulates fines for insult. According to the Media Strategy of 2011, the national authorities have to adopt new laws regarding the electronic media, the public services and access to public information, but these laws have still not been adopted (Marko, 2014a).

The Republic Broadcasting Agency (RBA), the independent authority regulating broadcast media, is defined as an "autonomous legal entity", "functionally independent of any state organ, as well as of any organisation or persons involved in the production and broadcasting of radio and TV programme" (Matic et al., 2012). The main tasks of the RBA include issuing broadcasting licences, setting technical, organisational and programming standards, prescribing binding rules for broadcasters, as well as implementing compliance control in the broadcasting sector. One of the important criteria for issuing broadcasting licences is the lack of owners' party affiliations (Kolo, 2013). However, there are concerns about how strictly this criterion is followed.

There are two major factors that are supposed to function as guarantees of the independence of the RBA. The first one is the procedure of electing its Council members, i.e. "elected in the National Parliament, where neither state or party officials, nor persons with vested interests in programming production or broadcasting, may feature as eligible candidates" (Matic et al., 2012). Candidate nominations come from the Culture and Media Committee of the National Assembly, the Assembly of the Province of Vojvodina, academia, NGOs and the professional media community. The second guarantee is the RBA's own source of revenue (broadcasting licence fees), which is supposed to provide financial independence (Matic et al., 2012). However, there are serious doubts about the full independence, accountability and impartiality of the media authorities as well as their capacity to properly apply the regulations (Marko, 2013). For example, the selection rules and procedures of the RBA's members are rather complicated and unclear and they are

therefore left open to arbitrary or biased interpretations and implementation, despite their attempt to guarantee RBA independence.

There is no licensing system for online media and online content is not regulated by any law, besides a single provision of the Law on Broadcasting according to which, even though a broadcasting licence is not required for internet webcasting, the provisions of that law do apply to webcast content.

The overall evaluation of the current legal framework highlights the progress of its transformation, but it also clearly outlines the lack of adequate implementation of this legal framework (Marko, 2013).

2. Public Service Broadcasting

The Law on Broadcasting regulates the two Serbian PSBs, Radio Television of Serbia (RTS) and Radio Television of Vojvodina (RTV). RTS is a national public service broadcaster and RTV is a public service broadcaster of the Autonomous Province of Vojvodina in the north of the country. Both RTS and RTV are managed by their respective managing boards, appointed by the RBA and General Managers, and appointed by their managing boards. Both RTS and RTV are funded by licence (subscription) fees charged to households and businesses on a monthly basis via the public company, which produces and distributes electrical power. However, the licence fee collection rates are decreasing, thus creating a situation in which the government needs to subsidise public service broadcasters in addition to the licence fee. This inevitably creates some grounds and opportunities for political pressure on the public broadcasters. The lack of transparency and clear rules regarding the distribution of state funds lead to a significant problems with regard to governmental economic influence (Milivojevic, 2012). Additional sources of funding of the PSBs are derived from commercial revenues, such as advertising. It should be noted that there are reforms under way, while this report is being prepared, to change the public broadcaster's funding making it, temporarily, a direct beneficiary of the state budget. The expected effects of this measure on the independence of the PSB as well as on the viability of the overall media market are rather dubious.

Existing reports of the RBA on the fulfilment of the PSB's remit unfortunately deal only with the fulfilment of programming quotas relating to programs originally produced in Serbian, as well as to quotas of their own productions and independent productions. No independent review of the role of the public broadcaster on media freedom and pluralism in Serbia has ever been conducted. Generally, RTS is often criticised, in particular for its extensive commercialisation and lack of distinctiveness compared to national commercial broadcasters. The claims for political instrumentalisation of the PSB are also typical of the commercial media based on unclear financial and political interests behind the media outlets (Milivojevic, 2012).

3. Media market - ownership, competitiveness, viability and independence

There are concerns that media freedom has been deteriorating in recent years, which is reflected in the ranking of the country by a number of international comparative studies. A specific media concentration regime is provided in the Law on Broadcasting, which restricts simultaneous ownership of two or more TV or radio stations with terrestrial FTA licences within the same or an overlapping coverage area, as well as cross-ownership between national terrestrial FTA TV and radio operators and daily news publishers and/or news agencies. However, any legislation related to limiting excessive ownership can hardly be implemented in the context of the lack of media ownership transparency, which was reported by the Anti-Corruption Council of Serbia as one of the major problems in the media sector in the country (Milivojevic, 2012), since the real owners of 18 of the 30 most influential outlets in Serbia remained unknown (Balkan Human Rights Network, 2012).

Following the changes of 2009, the Law on Public Information introduced a media register in an attempt to improve the transparency of media ownership. However, most of those amendments were declared unconstitutional by the Constitutional Court of Serbia, due to the fact that the amendments left too many

things to be regulated later on by the Minister, while the Serbian Constitution requests that any collection, keeping, processing and use of personal data be regulated exclusively by the law (Surculija et al., 2011).

The majority of Serbian media are commercial, privately owned and funded mostly by advertising revenues. However, the phenomenon of media owned by the municipalities is still quite popular. Until recently, as much as 26% of the TV and 25% of the radio stations in Serbia were publicly owned (Balkan Human Rights Network, 2012). Those media are predominantly funded by subsidies from local budgets, but also compete for advertising revenue. This hybrid method of funding has two major consequences. On one hand, the municipality budget funding compromises the information independence of these media sources and this is one of the crucial factors when talking about governmental economic influence over media (Milivojevic, 2012). On the other hand, the presence of these media on the advertising market creates an uneven field of competition with the private media, which are often unable to compete with the heavily subsidised municipal ones.

According to the Media Strategy adopted in 2011 with the support and guidance of number of national stakeholders and external actors, the government is committed to the withdrawal of the state from media ownership and to privatisation of all existing state-owned media, which was already required by the Law on public information anyway (Milivojevic, 2012). Drafts of the future media laws are expected to be adopted in accordance with the Media Strategy that set 31 December 2014 as the final deadline for the completion of all privatisations. The very fact that an additional strategy needs to be created in order to push towards the application of already existing laws is very indicative of the significant problems related to law implementation. The strategy applies not only to state and municipal owned media, but also to the state owned news agency, *Tanjug*. As for the privatisations that have been conducted so far, results have not always been satisfactory. Due to the underdeveloped media and advertising market and the effects of the economic and financial crisis, and the fact that the environment was not favourable to the commercial media, a number of privatisations failed, despite the fact that Serbia is one of the largest media markets in the region with strategic impact that goes beyond its sheer size. Other privatisation deals are surrounded by a lack of transparency and allegations of state interference, pressure and even deals that are presented as media privatisation, but in fact are conducted by state dependent companies functioning as representatives of the state (Balkan Human Rights Network, 2012). Sometimes, the role of the foreign owners in their own media outlets is not perfectly clear, especially since "[a] foreign legal or natural person may have a share of a maximum of 49% in the overall founding capital of the broadcasting licence holder" (Balkan Human Rights Network, 2012). Consequently, their actual/proportional influence on editorial policy is hard to determine and therefore any characteristics of such media are hard to attribute to its foreign ownership.

Generally speaking, the Serbian media market is underdeveloped and has been heavily affected by the economic and financial crisis. Marketing budgets directed towards media have been stagnating or decreasing during recent years. This is valid for all traditional media (TV, radio, press) and only the on-line media have seen some overall improvement in their financial status recently. Due to the unfavourable economic situation, the overall quality of content has decreased across all media. The number of independent voices being heard has also decreased. Since 2010, RBA has had to revoke more than 90 licences, mostly for not meeting the condition of paying the licence fee, and mostly on a regional and local level. The advertising market, and therefore the number of potential media advertisers, is shrinking and this is a significant challenge to media, especially since there are accusations and/or suspicions of relationships between businesses and political powers. The deteriorating financial status of media also makes the media weaker in their attempts to resist economic and political pressures.

Despite its economic underdevelopment, the media market is oversaturated with a large number of media outlets, which even leads to the unsustainability of the media system (Marko, 2013). The media system even

includes illegal broadcasters (Balkan Human Rights Network, 2012). The combination of the economic and financial crisis with the numerous, but weak media outlets, both private and state owned, leads to heavy dependence on state aid with no significant differences across media platforms. The state aid for media is distributed by the Ministry of Culture and Information. Additionally, Serbia has been slow to implement a proper state aid regulatory regime. This allows for the current state aid to be distributed in a non-transparent way, and to the detriment of the independence of media outlets. This lack of transparency is especially true for irregular or one-off grants of the state, which is even more detrimental for the overall climate of media dependencies (Milivojevic, 2012). In a weak advertising market, state aid easily turns into the biggest single source of income for media and this reinforces the risk of undue state influence over that media. But even advertising itself is very often state dependent since some of the largest advertisers are state-owned companies themselves (Milivojevic, 2012).

The questionable criteria for state aid distribution, and the crucial importance of state aid for the survival of media outlets, can be demonstrated by the case of two popular regional TV stations in Nis (the second largest city) which went bankrupt last year, despite holding approximately 60 per cent of the local viewership at that time. At the same time, generous state aid is distributed to the less popular local TV stations that continue to function.

4. The status of journalists

Journalists do not fall into the category of registered or licenced profession that require formal criteria and procedures for enlisting into the professional community (Matic et al., 2012). There is no legal definition of the term 'journalist' and it is used in its everyday broad-ranging meaning, including all types of media platforms and types of contracts. Consequently, the journalistic work is regulated by the General Labour Act, which applies to all unlicensed professions.

A University of Belgrade survey, conducted in 2011, concluded that journalists "work hard and earn little", have irregular income and no health care insurance (Matic et al., 2012). The average pay for a local journalist is approximately half the national average salary and several times lower than the salaries of public officials (Blagojevic, 2013). These unfavourable working conditions inevitably lead to work overload, compromise the quality of the work, as well as the attractiveness of the profession to talented people. There is also a history of journalists from various media outlets going on strike because of delayed payments (Balkan Human Rights Network, 2012), but this usually happens only when the situation becomes unbearable (Matic, 2014). Nevertheless, these fragmented actions do not lead to any systemic change and the job market for journalists continues to be characterised by job insecurity, low salaries and general deterioration of professional reputation and esteem (Matic, 2014).

In addition, journalists are often threatened when doing their work (Balkan Human Rights Network, 2012), in spite of formal legal guarantees of their safety. "The police provide protection for journalists only if they are under serious threat, but they are insufficiently effective in tracking down those responsible for such threats" (Matic et al., 2012). There are several Serbian journalists who live under constant protection due to serious threats, including the best-known investigative journalist, Brankica Stankovic (Vasic, 2013). There is even a case of assault against the B92 journalist, Tanja Jankovic, and her family, in which the local police were allegedly involved in the assault (Balkan Human Rights Network, 2012). The ineffectiveness in resolving the cases of violence against, and even the murders of journalists, has led to the formation of a special commission focused on resolving these cases (B92.NET, 2013). The rare success stories of protecting journalists usually result from huge joint efforts of media and NGOs (Blagojevic, 2013). However, this is not a sustainable practice that can be used as a normal working practice.

The fragmentation and ineffectiveness of the unions makes the self-organisation of journalists rather inefficient (Matic, 2014). "Most journalists are not members of trade unions, due either to fear of employers'

retribution or distrust of trade unions' effectiveness in protecting their rights" (Matic et al., 2012). They cannot therefore rely on support and protection from the unions either. The current economic climate has led to a further deterioration in the working conditions, economic independence and professional conduct of journalists.

There is wide support and official reinforcement of the Code of Conduct of Serbian Journalists. Amongst the professional associations embracing it are the Association of Serbian Journalists (UNS), the Independent Association of Serbian Journalists (NUNS), and other professional associations (Matic et al., 2012). However, there are numerous occasions on which professional and ethical standards are not followed, especially regarding the presumption of innocence, the protection of privacy, the protection of minors (Balkan Human Rights Network, 2012). Two associations of press publishers and two journalists' associations founded a journalists' self-regulatory body, the Press Council, in late 2009, which is responsible for answering a wide range of complaints towards journalistic misconduct and violations of the Code of Conduct (Matic et al., 2012). Despite the widely acknowledged status of the Press Council, its sanctions are limited only to public statements and there is still much to be desired regarding the professional culture of ethical conduct and observing of professional norms (Matic et al., 2012). The general context of economic pressure over media outlets and the lack of legal protection of journalists cannot be overcome by the attempts at self-regulation, while the image of journalists remains set as politicised, corrupt "dictaphone holders" (Matic, 2014).

The journalist's right to journalistic secrecy is explicitly defended in the Law on Public Information. In addition, the Penal Code excludes the journalist from obligation to disclose to the court their information sources, unless a criminal offence has been committed which is punishable by at least five years imprisonment or more (Article 41).

2.2 Countries that are potential candidates for EU membership

2.2.1 Bosnia and Herzegovina⁴

1. Legal framework and regulation

Bosnia and Herzegovina has formally included all the international human rights conventions as an integral part of its constitutional order. The Constitution of Bosnia and Herzegovina (BiH), as well as the Constitutions of both entities, the Republic of Srpska and the Federation of Bosnia and Herzegovina, expressly stipulate that: "The rights and freedoms set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina", and that: "These shall have priority over all other law". In 1999, the High Representative passed the Decision on Freedom of Information and the abolition of criminal penalties for insult and defamation, because the authorities in both entities failed to ensure the creation of the necessary legal framework that would enable journalists to work professionally and independently in their environment. Entity Constitutions also contain these guarantees. Defamation was decriminalised in Bosnia and Herzegovina in 2002. Defamation is now regulated by the Law on Protection against Defamation on state and entity level as well as in the Brcko Distrikt.

The BiH Law on Free Access to Information, just as in the relevant entity laws, stipulates that the authorities have the duty to provide citizens with access to all information in their possession, without *a priori* excluding the information that falls under the aegis of national or military security. The BiH Law on Communications defines the regulatory principles for broadcasting, where it is stipulated that they include "the protection of freedom of expression and diversity of opinion, while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy and impartiality". The media's conduct during the election period is regulated by the Election Law and by the Rulebook on Media Presentation of Political

⁴ The primary material on Bosnia and Herzegovina was collected by Borka Rudic, BH Journalist Association.

Parties and Candidates during the period from the day of proclamation of an election to the day of election, has been adopted by the Central Election Commission of BiH.

The Law on Communications defines the establishment of the Communications Regulatory Agency (CRA) as a functionally independent and non-profit organisation tasked with the regulation of the communications sector in the country. The Law sets out that, *inter alia*, the Agency has competence over the planning, management, and allocation of the frequency spectrum, the issuing of licences and the monitoring of the observance of rules and regulations in the area of broadcasting, as well as other rules and regulations that are set by the Agency. The process of licensing is fully non-discriminatory and transparent; it is carried out following the 'beauty contest' principle, based on clearly defined criteria and the best results achieved in technical, programme and financial terms. The regulator's independence has been jeopardised in the last three years, among other things, because of the failure of the Council of Ministers to appoint the Agency's Director-General and to confirm the election of its Council. Consequently, the current CRA Director and some of its members hold their places without proper legitimacy, which weakens the regulator and its reputation.

The Agency has adopted the Code on Audio-Visual and Radio Media Services, which could be considered as an instrument by which to measure the application of the licence terms. In addition, there is an Advertising and Sponsorship Code that is expected to be amended this year, in order to strengthen the provisions that regulate the protection of children and minors in the context of advertising and sponsorship. In addition to these codes, there is a set of guidelines providing assistance to the media so that they can apply the binding rules and regulations set by the Agency. Despite all these codes and guidelines, there are still concerns about the proper following of professional standards.

Currently, approximately 50% of the population have the opportunity access the internet (Internet World Stats, 2012). Online media in BiH do not require an operating licence and there is no registrar of on-line media. The Press Council in Bosnia and Herzegovina has committed itself to drafting a regulation in this area that would be based on the principle of self-regulation. In 2013, the Ministry of Communication started to draft a new Media Law, including the regulation of the internet and online media. Some concerns can be raised on this initiative, as it is expected to include limitations (such as permits and licences) on online media and published media on the internet. There is a particular problem with visitors' comments on websites that contain hate speech. The Press Council in BiH is promoting self-regulation to fight hate speech online. An interesting initiative is the "You are not invisible" campaign, which creates a synergy between the Press Council itself, the police, and the Courts in order to allow the police to know the IP addresses of those who post hate-speech and send them to court, making sure these individuals are 'not invisible' (Kurkowski, 2013).

2. Public Service Broadcasting

There are three broadcasting services and their joint body, the Corporation of Public Broadcasting Services. The PSBs have to suit the needs of the three constituent peoples and the citizens, being broadcast in three languages and two alphabets (but without guidelines in terms of national minorities and obligations towards them). The PBS at the state level and in the two entities (Republic of Srpska and the Federation of Bosnia and Herzegovina) have a dual system of financing: the licence fee and advertising. The amount of funds collected from the licence fee is quite low, because there is no efficient system of collection and, regardless of political urging, citizens do not to endorse this obligation, which is why the collection of these revenues amounts to between 8% and 70% in different parts of the country . PBS is also funded from commercial revenue – in the past few years, steadily increasing revenue from advertising on PBS (around 10 million Euros in 2012) (Regulatory Agency for Communication, 2013). The fact that 35% of all advertising revenue goes to PBS influenced the regulator's (CRA) recently adopted decision to reduce the time allowed for advertising in public service media (Regulatory Agency for Communication, 2013). Although this could

benefit the development and sustainability of the private media, this decision also reinforces the financial instability of PSB. Due to this, their budgets are topped up from the state or entity budget, which makes them vulnerable to additional political pressure and to dependencies.

The independence of the public RTV broadcasters is guaranteed under the Law on the Public Radio Television System of BiH. However, public broadcasting services are, in practice, under strong influences and pressures. An important reason for this is the election of people who are politically dependent and loyal to the key PSB managerial structures. This is made possible through an election procedure that is solely in the hands of the Parliaments and the application of a single majority approval. The strong political pressure and control on PSB in BiH was the reason that many media experts suggested changes within PSB legal regulation, such as a fundamental change in the entire management, as well as of the Law on the Public Broadcasting System. Another significant problem in the PSB operation is the fragmentation and the lack of progress with reforms that have already been started. Due to the lack of developments within the public broadcasters, the fourth member – the System Corporation – which would unify and improve their efficacy by using their full potentials, has not yet been established. This has also been caused by delays in system digitalisation.

3. Media market - ownership, competitiveness, viability and independence

In BiH, there are three ways to finance the media: the licence fee (RTV tax for the Public Broadcast Service); the public budgets of state, entities (Republic of Srpska and the Federation) and local authorities; and the advertising revenues and commercial activities of the media. There is no reliable information on media revenues and budgets. The estimations of the size of the media market vary significantly, with one of the highest estimations being approximately 315 million Euros. The Laws on PSB at the state level and in the two entities (Republic of Srpska and the Federation) have a dual system of financing: licence fees and advertising. In 2012, the total revenue for the three PSB services was approximately 36 million Euros (www.rak.ba). Besides the PSBs, there is a whole range of public local radio and TV stations that are dependent on financing by local and regional authorities. Although media financing is done with public money, the proper rules for public money distribution are not fully followed and thus the media are put in a situation of direct dependency. Private media in BiH is largely financed by advertising revenues and, according to the Association of Media Industries (UMI), the volume of the advertising market in BiH has fallen by 70-80% over the last four years.

Most people in BiH believe that the allocation of public funds to the media (just as in any other sector) is not transparent, while some consider that the situation varies from one canton to another. Some of the media owners and experts claim that the absence of relevant and acceptable criteria for fund allocation to the media leads to financial support only of 'suitable' media. The survey, conducted by the Association of BiH Journalists and the Friedrich Ebert Foundation in April 2013 suggests that 36.10% of the respondents in BiH (32.40% in FBiH, 40.30% in RS-u) believe that the main obstacle to media freedom is their financial dependency (Association of BiH Journalists, 2013).

The economic viability of media outlets is closely related to the lobbies that connect media owners, political and economic power centres. Very often, media owners and managers are almost directly related to the Presidents, Prime Ministers or Ministers, and consequently they develop mutually beneficial relations (funding media in return for expecting media support and propaganda). The media in BiH, particularly the private ones, are dependent on the interests of their owners, and their editorial policies reflect the preferred political option advocated by those media. There are no big differences between the types of media and media platforms: 'buying' media support is just as prevalent with private media owners and with managers in the public media.

Of special concern is the fact that political dependency and strong biases are becoming criteria for media reporting, attack and pressure on political opponents through the media and/or complete exclusion from media reports of political opposition to a media owner or an editor. There are even cases (which are not that rare) of the use of hate speech in the media when directed at political opponents who are members of other ethnic or religious groups, which take place during the election campaigns and politically influence the official line on editorial policy.

The transparency of media ownership is also a problematic area due to the lack of any central register of electronic, printed and online media, or commercial companies. Additionally, the current archives are usually not digitalised, and they are therefore not easily accessible. When it comes to electronic media, there is no doubt that there is a conflict of interest, given that there are links between an agency that conducts the polls measuring TV ratings and individuals who are employed in some media companies.

CRA has started to establish a system of regulation for the electronic media based on the principles set by the Independent Media Commission. These criteria need to strengthen the responsibility of the media, to develop competitiveness in relation to the allocation of frequencies, which would be the driving force for professional advancement, technical improvement, as well as for financial sustainability and transparency of the work of every broadcasting company. These standards are incorporated in the Broadcasting Code of Practice, adopted in August 1998, and amended several times later, and harmonised with the right to freedom of expression and the Constitution of BiH. BiH had no major privatisations in the media, nor had there been foreign investment in the media or local media buying by foreign companies in the media field. The main challenge for future media privatisation could be the privatisation of local and regional public broadcasters. Earlier, the decision of the High Representative in BiH prevented the privatisation of the media, but this rule was abolished 6 years ago. There are 73 local and regional public broadcasting stations (64 radio stations and 9 TV stations), and they have a very significant impact on the public in their local communities. However, they are in a very poor financial situation.

On the territory of BiH, there are two broadcast TV stations that are owned by foreign nationals: *TVPINK BiH*, which is owned by a Serbian citizen; and *OBN TV*, which is owned by a Croatian citizen. In recent years, one daily newspaper *Glas Srpske* from Banja Luka has been privatised by Milorad Dodik, who is allegedly close to the President of Republika Srpska. In connection with this privatisation, there were no indications of irregularities, but the fact that a large company was privatised by a person close to the current government of the RS entity, has caused various rumours and commentaries to arise among the BiH public. In connection with this privatisation, there had been also concerns about the possible concentration of media ownership since two daily newspapers in the RS, some magazines and women's magazines, a radio station, a printing factory, press distribution, etc., have a common owner.

4. The status of journalists

In Bosnia and Herzegovina, there are no official specific requirements for those who want to be journalists. The definition of 'journalist' is included only in the statutes of journalistic organisations, such as the Statutes of the BH Journalists Association, where a journalist is defined as "a person whose principal profession and source of income is journalism". The definition of 'journalist' is missing in the laws relating to the media, such as the Communications Law, the Law on Protection from Defamation, the Freedom of Access of Information Act, the Labour Act, etc. In September this year, the Ministry of Civil Affairs in Bosnia and Herzegovina has initiated the establishment of official definitions for journalists, freelancers, bloggers, defining the journalist as a person whose profession is the production of news and other media.

Labour legislation is rather well developed, but in many segments it is not harmonised across BiH and it is often not applied as envisaged. Journalists are covered by the general employees' rights that are guaranteed by the Labour Code. Unfortunately, the Labour Code is not applied rigorously and this trend is

reinforced by the lack of legal harmonisation between entities and cantons, as well as the division of competencies for inspections. Due to this complicated and fragmented system, trade unions and individual workers often do not know whom to address, and practically, there are no legal sanctions for employers who fail to pay contributions for health and social protection. Journalists are generally underpaid, with salaries ranging from 250 Euros per month (in both local public and private media) to an average of 700 Euros for journalists and editors in the public service. Another problem is the trend towards employing journalists on a part-time basis, while they actually work full time. An ever-growing number of employees work on contracts for a specific period of time, e.g., for 2 years only. However, many media employees work with these contracts for 5 or 6 years. The lack of protection for journalists also extends to their exposure to political pressure and even to a lack of physical safety, which is not well guaranteed by the legal system. Journalists are often exposed to different sorts of pressures, while their unenviable financial situation and dependency make them totally subordinated, forced to serve political and other centres of power, most often to the detriment of professionalism and impartiality.

The successful implementation of self-regulation in BiH is focused on the BiH Press Council, founded in 2001 as a self-regulatory body for printed and online media. The Council tries to increase the level of professional reporting and to enable readers to protect their right to truth, by way of submitting complaints in cases of inaccurate reporting and by securing the right to refutation. It explores the arguments of all sides and issues decisions and recommendations. It avoids the pronouncement of sanctions in order to stick to the principle of self-regulation (see www.vzs.ba). Self-regulation, as a means of enhancing the quality of journalism and its credibility, is also contained in the Code of Honour, which has been applied by the BH Journalists' Association.

The overall level of the professionalism of journalists is somewhat problematic. Some of the factors leading to the problems are the hyper-production of journalists, the brain-drain, the inadequate development of online media, the low quality of education and inadequately qualified professors who teach at the schools of journalism, and the bias due to the interests of media owners. The large number of media outlets leads to the devaluing of the journalistic profession and an influx of unprepared and unqualified journalists, who then become easy targets for political manipulation and the different influence lobbies that are associated with the media. Currently, there is a debate on whether licensing or professional examinations for journalists should be introduced. Criteria for and decisions on such a procedure should be established by professionals (media organisations, journalists' associations), and not by the authorities. However, in the present situation, it is very difficult to develop a test that would be credible and to form a commission that would evaluate this in an impartial fashion. Regarding the education of journalists, an additional problem is the lack of practical training for students of journalism.

Four years ago, the BH Journalists Association launched a procedure to amend the Criminal Code in order to ensure better protection of journalists during their daily journalistic tasks, due to journalists in BiH having often been victims of physical assault, death threats and other forms of violence. These changes were not accepted in the Parliament, a large number of Parliamentarians even ridiculed the proposal on the grounds that journalists should not be 'protected bears' and that the journalistic profession does not deserve any kind of privileges or special protection measures.

The consequence of the global crisis and the shrinking advertising market in BiH is the further deterioration of the economic situation of journalists in BiH, who are amongst the lowest paid in the Balkan region (only about 50% of journalists have salaries that ensure normal life), many of them are working without a contract ('black' market, or as freelancers, for about 40% of media employees) and they do not receive proper union protection. This employment related vulnerability and the lack of security have had a significant impact on journalists' work, increasing self-censorship and other forms that lower professional standards. Only 16% of BiH media professionals have joined a trade union organisation. There are two unions, the Federation one

and the RS one, but they do not co-operate enough to improve the position of journalists and to equalise working conditions for all journalists within BiH.

2.2.2 Kosovo⁵

1. Legal framework and regulation

Kosovo has a relatively good legal framework in place, starting from the Constitution of Kosovo, which explicitly regulates freedom of expression and freedom of the media. Defamation has been decriminalised and currently Kosovo applies civil law against defamation and insults. Additionally, the Kosovo Parliament recently approved a law on the protection of journalistic sources that was based on the Belgian model, which is considered one of the best laws in Europe. The law also regulates the public broadcasters and the regulatory authority for electronic media, the Independent Media Commission, but they have raised concerns related to the composition of their boards. Currently, online portals are within the competence of the Kosovo Press Council and are not regulated by any particular law.

The Independent Media Commission (IMC), which was established by the Kosovo Parliament, regulates electronic media. According to the Law on the Independent Media Commission, it is “an independent body for regulation, management, and oversight of the broadcasting frequency spectrum”. Despite the legal requirements for IMC independence, its composition and functioning are influenced by political pressures. The IMC board members are elected by the majority of the MPs in the Parliament, meaning that the board members are people affiliated to the ruling political parties. As a result, the civil servants, who are part of the executive group of the IMC, are often blocked by the political agenda of the IMC Board. Recently, it was widely reported that the new Chairman of the IMC Board had failed to disclose his political activities in local government, which would have automatically disqualified him from his position. Despite all the media reports about this clear breaking of the rules, there are no indications that he intends to step down (Kusari, 2013).

Currently, Kosovo has no law on online content and therefore online media are regulated under the general legal provisions, for example, the Law Against Defamation and Insult. The Law Against Defamation states “for defamation or insult made through media outlets the following may be held jointly or individually responsible: author, editor or publisher, or someone who has otherwise exercised control over its contents”. The same is applicable in the Criminal Code of Kosovo, which, amongst other criminal offences, regulates hate speech. Additionally, online content is regulated by the Code of the Press Council of Kosovo, approved in January 2012. The guidelines include specific articles that are related to online journalism, including the content of comments and the reactions of the public posted on web based media and news agencies’ web pages (Kosovo Press Council, 2012). The online media section of the guidelines contains seven main rules focused on the responsibilities of the editorial board in monitoring and omitting inadequate parts of the published material as soon as possible.

Regardless of the media platform, there are still concerns about the media observance of hate speech and defamation regulations. Just recently, during September 2013, an indictment for hate speech was filed for prosecution against three people. The indictment was a follow-up action to protests that happened in Prishtina (the capital city of Kosovo), where a group of people objected to the promotion of the magazine *Kosovo 2.0* entitled ‘Sex’. The magazine included articles and opinions on sex as a taboo topic in Kosovo, focusing on the rights of the Lesbian, Gay, Trans-sexual and Homosexual, LGBT community.

2. Public Service Broadcasting

⁵ The primary material on Kosovo was collected by Flutura Kusari.

Radio Television of Kosovo, RTK, is the public service broadcaster, which consists of a television service, broadcasting and radio, and which is regulated by the Law on Public Broadcasting. The Constitutional Court ruled that the licence fee was not due (Kosovo Constitutional Court) based on the ruling that the licence fee, paid as part of the electricity bills, was unconstitutional, because everybody, including those who had no TV at all, were obliged to pay. Subsequently, the Court ruled that the RTK should receive a subsidy for a transitional three-year period, amounting to 0.7% of the annual Kosovo Budget. This shift to direct state funding raises concerns and undermines the broadcaster's editorial independence. RTK was obliged by the Law on Public Broadcasting to create a plan to end the current transitional state budget funding. However, RTK's plan was to continue with the direct funding from the state.

There are different aspects of criticism pointed at RTK, including the lack of investigative journalism, political bias, extensive coverage of the ruling political party (for example, coverage of the annual meeting of the ruling Kosovo Democratic Party), short and misleading coverage of opposition parties' protests. According to critics, the failure to cover oppositional events "was a major signal of state financing putting the editorial independence of public television at risk" (IREX, 2013b). Another critical issue is the failure of RTK to ensure coverage of the whole territory. Some municipalities are left with no coverage, as RTK covers only 62.7 per cent of the territory (Independent Media Commission of Kosovo, 2013).

The RTK board members are elected by a simple majority of votes in Parliament, which allows for the ruling party to appoint people over whom they have influence. Even according to the current procedure of board member elections, the RTK board is still failing to meet the requirements, as there are three board member places that have elections pending.

3. Media market - ownership, competitiveness, viability and independence

Despite the lack of legislation devoted to media ownership transparency, according to a non-governmental organisation, "media ownership in Kosovo is considered to be transparent" (INDEP Institute for Development Policy, 2013). In order to monitor media ownership, the Independent Media Commission of Kosovo (the state regulatory authority) obliges all television and media companies to send ownership reports on an annual basis. Media are also obliged to disclose this information to the tax authorities as part of their tax payment obligations. However, if media are not registered as companies and do not pay taxes, they are not obliged to report their ownership to anyone.

In general, media are not funded by the state, but by advertisement revenues, which results in the favourable treatment of major companies, who are also big players on the advertising market. As a consequence, on one hand, some media manage to remain sustainable through advertising revenues; on the other hand, their dependency on big advertisers very often results in self-censorship. The state does not provide aid or any other funds to the media, except for the minority media, who are subsidised with small amounts.

Media outlets are facing major financial crises. According to IREX, "2012 was a year of financial crises for the media in Kosovo." (IREX, 2013b). The IREX report notes that "two daily newspapers that had operated for more than six years closed due to financial constraints" and that this has resulted in "job losses, especially considering the increasing number of young journalists graduating every year from universities" (IREX, 2013b). Nevertheless, media outlets that are close to politicians do not seem to suffer financial crises, as they earn revenues from advertising. Overall, the current economic situation has had its impact on media, but mainly in the case of the independent ones, while those supporting political powers have managed to survive.

Due to political influence, the public broadcaster is still not able to offer a diversity of views and standards, but it has a rather one-sided approach. Consequently, RTK fails to cover protests, if they are organised by opposition parties, for example, the Vetvendosje (the opposition party) protests of 2012, as well as other

important social and political issues and events. Beyond the political pressure, RTK has a good potential to offer professional, high quality media due to its good equipment and professional editors and journalists. In the private media sector, the ownership is overwhelmingly local, as there is no foreign investor interest in the Kosovo media market.

4. The status of journalists

The concept of 'journalist' has recently been defined in Kosovo with the Law on the Protection of Sources (the law was enacted on 22.08.2013). It is mainly based on the Belgian model and defines a journalist as "each natural or legal person, who is engaged regularly or professionally to contribute directly in the gathering, editing, production and dissemination of information to the public through the media".

According to the Association of Professional Journalists, every year there are around 20 cases of journalists being intimidated, prevented from doing their job, or being threatened. However, it should be noted that no serious attacks or violent acts have happened so far. Kosovo can be considered a safe country in terms of physical threats, but it is rather different with regard to job security and payment. There are cases where media employers do not pay journalists, but due to fear of losing their job completely, journalists avoid voicing their problems and cases of breaches of contract are not reported to the authorities or made public. Freedom House also concluded that "journalists have few professional rights, earn low wages, and often work without contracts, leaving them vulnerable to corruption and prone to self-censorship" (Freedom House, 2013a).

There are two Codes of Ethics that regulate the way the journalistic profession is exercised. One of them is the Kosovo Press Council's Code of Ethics (Kosovo Press Council, 2005), and the other is the Independent Media Commission's Code of Ethics (Kosovo Independent Media Commission, 2010).

The press in Kosovo is regulated by the self-regulatory body called the Kosovo Press Council, which is composed of 18 members from print and online media. The board gathers every month and they deal with approximately 100 claims per year. Most of the print and online media respect the Press Council's decisions and they publish the decisions in their daily newspapers. Regarding its financial sustainability, the KPC is still dependent on foreign donors and not all the members pay the membership fee. However, its main challenge remains that of adjudicating on decisions on online media and in including the online media, which are characterised by copyright and privacy violations and hate speech.

There are well-trained journalists and in their work they normally follow the principles and rules of the Code of Ethics. However, the general journalistic knowledge of the media legislation is rather low. Most of the reporting is in line with the code of conduct, but this evaluation should take into consideration the fact that, in general, investigative reporting, where journalists experience more ethical, legal and moral dilemmas, is lacking in Kosovo. None of the media outlets have media lawyers who will conduct legal checks on their outputs. However, they hire lawyers when they are sued or they want to sue somebody.

According to the Criminal Procedural Code, which was enacted in January 2013, a journalist or an editor who works in the media, or one of his or her assistants, is exempted from the duty to testify. Additionally, according to the Law on the Protection of Sources, journalists and other media professionals have the right to remain silent regarding their sources of information, with the exception of cases where revealing the identity of the source of information is necessary to prevent a serious threat to physical integrity, which could lead to the death of one or more persons.

The local NGO, INDEP, noted in 2012 that the "permeability of editorial independence in the face of advertisers, political pressure through the close links between media owners and politicians and the global dwindling media revenues, particularly in the written press, are only some of the concerns. As a result, journalists in Kosovo often resort to a level of self-censorship in order to preserve their safety or financial

security” (INDEP Institute for Development Policy, 2013). This situation is still current. Journalists are afraid to object to editorial decisions and thus end up mainly reporting on protocol news rather than doing investigative journalism.

3. ANALYSIS AND ASSESSMENT OF THE ROLE AND IMPACT OF THE EU POLICIES AND ACTIONS ON MEDIA PLURALISM AND MEDIA FREEDOM IN THE WESTERN BALKANS

3.1 General framework of the accession process and its relevance to media freedom

Every wave of EU enlargement has its own character, specificities and political context, which are dependent upon the context in the applicant countries as well as on the particular political circumstances in the EU itself. This creates a need for the procedures of the accession process to evolve accordingly. Changes in the accession instruments and policies usually result from the development of the internal EU rules and the experience of the previous wave of accession, rather than in response to anticipated potential challenges or the specific context of the current accession wave. The on-going accession process of the Western Balkan countries is characterised by significant elements of state building, peace building and reconciliation, especially in comparison to all previous waves of EU enlargement. This political and historic context has a number of consequences, which in turn influence the overall democratisation as well as media freedom reforms in these countries:

- Low state capacity

All countries in the region, apart from Albania, had experienced a type of redefined statehood and borders. At the same time the political transition caused profound changes in the political processes. Consequently, these countries have experienced a process of state (re-)building and often new independent institutions have been established. This in turn creates additional complexities and pressure to establish sustainable and efficient democratic policies and institutions, including in the area of media freedom. The capacity of the state itself and most of its institutions is often eroded and undermined, or simply still fragile. This is one of the explanations of the low quality of governance and high corruption that prevent the countries from easily catching up with the EU levels and criteria (Goldstein, 2014). Many of the deficiencies in the area of media freedom are a direct consequence of low state or institutional capacity, as is the inability to take full advantage of many of the readily available EU programs.

- Post-war civil society and sensitive national identity sentiments

In almost all countries of the region the political culture and social groups still carry the scars of a post-war society. Civil society organisations are often very weak, lacking strong structures and expertise, which leaves social and political processes to be led by different interests groups bargaining behind closed doors (Vltmer, 2013). This is especially detrimental for the perception of media freedom and transparency of political processes.

In addition, the ethnic conflicts seeded heightened nationalist tendencies and sensitivities. This increases the pressure on externally introduced democratic changes which are supported and properly implemented, only when they are seen as coherent and in-line with the national identity and interests (Freyburg et al., 2010). Changes coming from inside towards sustainable media freedom are crucial, making the necessity for civil society capacity building particularly important (Boev, 2014).

- Special relations with and conditions by the neighbours

Within the region, the accession process itself is often perceived as politically conditioned rather than dependent on the actual progress of the countries. Recent developments, including the failures of the

Greek state and economy reinforced the perception that strict criteria are not the leading rationale in the Balkan accessions (Rupnik et al., 2013). In addition, Bulgaria and Romania are constantly described as lagging behind and even as "post-accession hooliganism" (Rupnik et al., 2013). The additional conditions related to the name dispute between the former Yugoslav Republic of Macedonia and Greece, as well as Serbia's candidate status being dependent on the country's approach towards Kosovo, reinforce these opinions. The perception of political conditionality of the accession process undermines the intensity and willingness of cooperation of local politicians and societies as a whole. There are reasons to believe that as a result of this, local political elites hold back reforms in the area of democratisation and media freedom as part of the EU accession.

– Special presence and role of the international institutions

As an aftermath of the war period, the Western Balkan countries enjoyed a much stronger presence of international organisations, than countries of the previous accession waves. A prime example is Bosnia and Herzegovina, where international actors even have played a leading role in the governing of the state for very long time. The sheer amount of financial assistance provided by different donors of the media sector (hundreds of millions of dollars) by far exceed the proportional amounts received by other post-communist countries (Petruseva, 2010). Nevertheless, the large donor programs and strong presence of the post-war period are not viewed entirely positively. According to many local experts, external assistance was provided without proper consideration of local needs, without selectivity with regard to which local entities were to be assisted, without a long-term strategy and very often even under the influence of an explicit external political agenda (Petruseva, 2010). For example, there was significant coordination of the intensive media assistance aimed at overthrowing the government of Milosevic (Marko, 2013). Further problems are caused by the fact that the high volumes of external assistance were significantly reduced before the local independent media managed to build sustainable business models and after having become accustomed to receiving and dependent on external help (Petruseva, 2010).

With the advancement of the accession process and the implementation of related instruments, the EU has secured its leading role as an international institution in the region (Bieber, 2011). The strong presence of a variety of international institutions, most of them dealing with issues of media freedom, makes the need to establish systematic collaboration between them, which has generally been absent throughout the region, more pressing.

The strong presence of international institutions sometimes also leads to (the perception of) their intrusiveness. The level of intrusiveness of EU demands as a result of the accession process has varied from country to country and has led to varying levels of willingness by local political elites to collaborate and comply with the EU accession process (Noutcheva, 2012). Thus, some authors talk about different types of compliance, namely substantial, partial, fake, and imposed compliance (Noutcheva, 2012). For example, Noutcheva labels BiH as partially compliant, (although others would argue that the level of external involvement and interference in the state result in imposed compliance); Serbia as fake compliant and Kosovo as non-compliant (Noutcheva, 2012). Additionally, the accession criteria since 2000 have evolved significantly compared to the ones of 1993. The increased complexity in the criteria may have discouraging effect as various studies have found that the level of compliance with EU requirements and active collaboration by local political actors with EU institutions is dependent on how realistic and within reasonable timeframe the EU accession is perceived to be (Morlino et al., 2008).

The current approach by the EU towards accession countries is to demand "credibility and irreversibility of the reform process" (Noutcheva, 2012). This increases the perception that the overall approach of the EU to the Western Balkan countries constitutes a crucial element of the democratisation process. The pressure coming from Brussels towards media freedom reform is seen as necessary and as having real impact on national governments (Igric, 2011). However, concerns remain that signs of "enlargement fatigue",

preoccupation with the financial crisis, and negative perceptions of the previous enlargement waves could further slow down the accession process and thus the democratisation and media freedom reforms in the region (Daskalovski, 2013).

The media and its transition towards democracy have only very marginally been covered in the political science literature concerning the transition to democracy in Southern Europe and Latin America (Gallagher, 2012). However, the media are considered of central importance in the post-communist transition by academics, policy makers and the wider society. Undoubtedly, one the reasons lie in the historical development that leads to an increased mediatisation of politics and the development of media technologies. Another important reason lies in the different approach towards the media by dictatorial and totalitarian regimes and their use as propaganda tools. In later years, the legacy of the early post-communist transition in terms of heavy instrumentalisation of the media, as well as the economic crisis and/or weak markets, left the media ill-equipped to support and foster the democratic transition in the region (Gallagher, 2012). As a result, the political culture of oppressing media is difficult to change and requires long-term efforts from local entities as well as external assistance (Jusic et al., 2013).

The lack of a single EU model and recipe for the ideal media freedom system has weakened the impact of the EU in this area (Boev, 2014). Nevertheless, the strong need for external support is demonstrated by the inability of national institutions to maintain their independence and restrain political hijacking following the withdrawal of international donors (Votmer, 2013). Although a sustainable media freedom system can only function if it is based on strong internal factors, these very factors and institutions are still in need of support and capacity building. In particular the areas of media accountability capacity, self-regulation and professional standards monitoring require special attention (Boev, 2014).

3.2 Overview and assessment of EU internal legal, institutional and policy framework on media pluralism and media freedom

There are at least two important areas that European policymakers are concerned with in relation to the media sector. The first is the market and competition aspect, where the EU has well-established competences. These are not specific to the media, but are valid for other markets as well. The second aspect regards the media sector in relation to human rights, the right to access to information and freedom of expression, their political and social impact, and their importance for the functioning of a liberal democracy. This aspect forms a part of the normative understanding of democracy, but is also part of the Copenhagen criteria to which all EU Member States should be aligned. Therefore, both of these aspects are part of the EU legal and policy framework, although in different ways.

With regard to the first area, the European Union has adopted a comprehensive approach to liberalising and harmonising markets throughout Europe, by adopting modern and pro-competition regulation: the EU regulates electronic communications, aspects of the audio-visual sector⁶, technical aspects of information services and electronic commerce⁷. European legislation also covers the regulation of specific rights, such as those on data protection and copyright,⁸ that are relevant and closely related to media regulation. This aspect also forms a significant part of the accession process, including in the harmonisation of key legislation in the candidate states according to the *acquis communautaire* on media-related topics. Its

⁶ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Audio-Visual Media Services Directive - AVMSD). See also Valcke-Lefever, 2012.

⁷ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

⁸ Besides regulation, the European Commission carries out many other interventions to foster the sector (e.g. Media program, content online and media literacy, protection of the European cultural interests in the World Trade Organization, etc.).

formal documents are transposed appropriately in most countries of the region or their application is well advanced. However, the application of the formally transposed rules and regulations is often a problem.

With regard to the second area, the EU acknowledges that the media sector is a very important, but also very sensitive area, strictly linked to the political and democratic principles and institutions of the individual Member States, as well as to the rights of freedom of expression and access to information⁹. This aspect is also scrutinised during the accession process not only from the point of view of media freedom, but also with regard to the general quality of democratic processes.

The European Union acknowledges the protection of freedom of the media as a fundamental right. Although the European Community was founded with the principal aim of creating a common internal market, and although a specific Charter on Fundamental Rights of the European Union ('the Charter') was missing until 2000, fundamental rights have been considered as a core part of the Union *acquis* by the ECJ (now CJEU) since the 1970s (CMPF, 2013). Today, the Treaty of Lisbon acknowledges fundamental rights by reference to the Charter, which was recognized to have the same value as the Treaties. In particular, Article 11 of the Charter refers to freedom of expression and freedom and pluralism of the media. The Charter acknowledges a link to the ECHR, the Council of Europe's activities and other international standards on freedom of expression and freedom of the media: in fact, the Charter (according to Art. 53) must be interpreted in line with the existing standards that are enshrined in the international agreements to which the Union, the Community, or all the Member States, are party and, amongst others, in the ECHR. Notwithstanding this commitment, neither the Treaties, nor the Charter foresee an explicit competence of the EU with regard to media freedom and pluralism (see Art. 51 of the Charter and CMPF, 2013).

Recently, European intervention in the area of media pluralism and media freedom has shifted its focus from the more consolidated instruments for market harmonisation and liberalisation to a greater focus on strengthening EU policies on media pluralism and media freedom, including its democracy related fundamental principles. The shift resulted mainly from political pressures by the European Parliament (Klimkiewicz, 2009; CMPF, 2013) that on many occasions (e.g. the recent Weber Report (European Parliament, 2013)) stressed the need of a legislative initiative on media freedom and pluralism in the Member States and in the Union. It also took place in response to the continuing problems in the area of media freedom and pluralism, despite the formal fulfilment of the requirements to transpose market related legal acts in some of the countries that have gone through the accession process recently. Therefore, there is clear two-way connection between EU policy on media pluralism in the Union and its approach to the issue in the context of the accession process.

A number of key initiatives demonstrate the more holistic and in-depth approach by the EU towards the media freedom and pluralism in and beyond the borders of the Union. In 2007, the European Commission responded to the requests from the European Parliament for a direct involvement of the EU on the topic of media freedom and pluralism, by launching a study with the aim of clarifying and advancing the debate on media pluralism. The study, carried out from 2007 to 2009 by the University of Leuven, the Central European University, Jönköping International Business School and Ernst & Young Consultancy (Belgium) aimed to define a set of indicators and to construct a monitoring tool that could measure threats to pluralism in Member States (CMPF, 2013). Moreover, in October 2011, the Commission appointed the High Level Group (HLG) of experts on Media Pluralism and Freedom requesting recommendations on the main

⁹ In particular, the Protocol on the System of public broadcasting in the Member States, attached to the Amsterdam Treaty recognizes the role of public service broadcasting in the member states as directly linked to social, democratic and cultural needs of the society and to the need to preserve media pluralism, while it set rules for PSB financing, that must not affect trading conditions and competition in the Union to an extent which would be contrary to the common interest (on that regard, see the Communication from the Commission on the application of State aid rules to Public Service Broadcasting (2001) and the revised Communication adopted on 2 July 2009)

issues related to the topic from the group. In December 2011, it established the "EU Media Futures Forum, chaired by Christian van Thillo, CEO of De Persgroep, to reflect on the impact of the digital revolution on European media industries and on ways to improve the policy framework for European media industries"¹⁰ (CMPF, 2013; Brogi et al., 2014). In the meantime, it has entrusted the Centre for Media Pluralism and Media Freedom (CMPF) at the Robert Schuman Centre for Advanced Studies of the European University Institute, Florence, "with the long-term mission of accompanying the process of European integration on media pluralism and freedom, and of developing a policy report on European Union competences on media freedom and media pluralism" (CMPF, 2013) and to carry out, as a pilot project financed by the budget of the European Parliament, a simplification and a pilot-test implementation of the 2009 Media Pluralism Monitor (Brogi et al., 2014)¹¹. This instrument is currently pilot-tested in a sample of EU Member States, but it can also serve as a useful check-list for accession countries in relation to EU norms and expectations regarding media freedom and pluralism.

The Council itself has also recently stressed the need for a stronger policy of the EU on media freedom and pluralism, acknowledging the important role of the Commission in "supporting projects that aim at enhancing the protection of journalists and media practitioners", independent media monitoring through the CMPF, strengthening "cooperation between Member States' audio-visual regulatory authorities" and promoting "best practice as regards the transparency of media ownership"(Education, Youth, Culture and Sport Council, 2014).

The first tangible result of this renewed EU policy has been the increased interests on the part of the Commission on the guarantees for independence of National Media Regulatory Authorities and the establishment by the Commission of a group of EU Regulatory Authorities (ERGA) in the field of Audiovisual Media Services, (as suggested by the High level group and by CMPF policy report) to advise the Commission in implementing the EU's Audiovisual Media Services Directive (AVMSD) in a converged media age (CMPF, 2013). The active and increasing involvement of the EU in such policies can be seen as a political signal of the importance that the EU places on the role of the media sector. It also demonstrates a certain level of recognition of existing concerns relating to media freedom and pluralism standards in the Member States that may be tackled through political pressure, with a soft-law approach, but could be addressed in a more coherent and consistent way if the EU had a specific competence on media freedom and pluralism according to the Treaties (CMPF, 2013). Such political messages are of great importance, but more tangible and consistent policies of pressure for change towards more media freedom and pluralism are even more important as governments (in the perspective of the case of Western Balkan countries) are likely to respond efficiently only to more explicit political pressure (Balkan Investigative Reporting Network, 2013). Such political pressure can be exercised as part of the accession process itself.

¹⁰ Another important document – published for consultation. The green paper "Preparing for a fully converged audiovisual world" Brussels, 24.4.2013 COM(2013) 231 final

¹¹ Note that the Centre for Media Pluralism and Media Freedom has also produced the present report.

3.3 **Current policy and financial instruments available in EU enlargement: how they affect media freedom and media pluralism.**

While the EU ‘internal’ intervention on media freedom and pluralism is based on a soft law policy intervention and to date has explicitly avoided any specific commitment to legislative action (Education, Youth, Culture and Sport Council, 2014), policy instruments on the media in the Western Balkans are mostly based on the EU’s enlargement procedures (European Commission, 2012a) that, by creating the conditionality for EU membership, are a driving force for the establishment of common European standards, providing incentives and sanctions for compliance or non-compliance with EU acquis. These instruments also aim, directly or indirectly, to tackle media freedom. Therefore, in the context of the accession, political players and society more broadly perceive the European Union as the ultimate standard-setter and the guarantor of democratic principles and procedures, observance of human rights, and media freedom and pluralism.

– Fundamentals first: freedom of expression

The process that leads to the accession of a country follows many formal steps, from a pre-accession strategy to the ratification of the final accession treaty. In order to start the accession process, the EU asks the country to meet a number of key criteria for being part of the Union, the so-called Copenhagen criteria. According to these criteria, the countries that wish to join the European Union must demonstrate compliance with essential democratic standards, such as stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. This is the realm of the second approach to media freedom and pluralism mentioned above. Currently, it enjoys increased attention from the EU institutions following the principle ‘fundamentals first’.

Key necessities that all candidates face are the development of a functioning market economy, as well as the capacity to compete with the market forces within the EU. This is part of the first realm mentioned above. Moreover, the countries must accept and implement effectively their membership obligations, including the adherence to the aims of creating a political, economic and monetary union. A pre-accession strategy is developed for each applicant country in order to help prepare the accession, but there are a number of standard elements, procedures and steps to be taken for all the countries. These common procedures are the founding pillars of the EU enlargement policy and serve as a parameter for assessing progress in individual countries, first of all regarding freedoms. Based on the experience of the previous enlargements rounds, starting from 2006 with the “new consensus on enlargement” (Council of the European Union, 2007), the EU stressed the importance of the rule of law as central to the enlargement strategy. Accordingly, the most recent enlargement strategies have emphasised the need for countries willing to access European Union to demonstrate their efforts with respect to “fundamentals first” at a very early stage of the accession process. As a result, the rule of law, the functioning of institutions guaranteeing democracy, fundamental rights, (in particular freedom of expression as a key priority in the area), are tackled in a coherent and interconnected way, amongst the key challenges mentioned in the last enlargement Strategy (European Commission, 2013d): administrative and judicial reforms, for instance, may have an impact on the rule of law and on the interpretation of media freedoms at case law. In this regard, an important role is played by the implementation of Chapters 23 “Judiciary and fundamental rights” and 24, “Justice, freedom and security”. These chapters (see next section) will be addressed at an early stage in the negotiations for accession. They will be opened on the basis of action plans with interim benchmarks, which need to be met.

In this context, achievements in the area of freedom of expression become an important indicator of the health of the democracy in the given country. There are still many aspects of the civil and institutional environment of the countries of the region that need to be addressed: “cases of violence and intimidation against journalists... prosecutions of journalists” (European Commission, 2013d). These issues also must be

addressed in reference to the judges, who are not well trained in applying new laws and principles. Other issues to be addressed are the “political interference with media freedom”, lack of political and financial independence of public service broadcasters and of regulatory agencies, lack of transparency in media ownership and the need of fostering self-regulation amongst journalists (European Commission, 2013d). The need to tackle these issues also requires the need of a relevant package of accession support measures, programs and funds to facilitate the proper implementation of the EU norms and requirements, apart from a structured policy on the judiciary and on the administration at country level.

– The *acquis communautaire*

Beside the respect of “fundamentals first”, the countries that aim to enter the European Union must comply with the standards defined by the EU legislative *corpus*. Potential Member States must, therefore, to bring their laws into line with the corpus of European law, the *acquis communautaire*. The *acquis* that is specifically relevant to the media sector and to media freedom is mostly associated with the processes of liberalisation and harmonisation of the internal market at EU level (CMPF, 2013) and refers only in an indirect manner to media freedom and pluralism. They follow long-established internal EU policies on media freedom and pluralism and, therefore, the newly shifted focus is reflected only in an indirect manner, i.e. it is not included explicitly in the *acquis*.

In order to monitor the development of the implementation of the European legislation, the relevant *acquis* is classified into 35 separate chapters (European Commission, 2013b), each dealing with different policy areas. Once the negotiations for membership have begun, each of these different chapters is negotiated separately and based on the progress of each applicant country.

As discussed in the second section of this Chapter, the core media legislation of the EU aims to regulate the media market, as a general competence of the Union on competition. Amongst the 35 chapters, chapters 10 Information Society and Media, is the one that deals more directly with and has the potential to have an impact on media freedom.

The *acquis* covers the specific rules on electronic communications, information society services - in particular electronic commerce and conditional access services - and on audio-visual services. Beside Chapter 10, chapters 7 on ‘Intellectual Property Law’, 8 on ‘Competition Policy’, 3 on the ‘Right on Establishment and Freedom to Provide Services’ and 6 on ‘Company Law’ are relevant as they cover regulations that can affect the extent of media freedom in a given country. The *acquis* also requires the capacity to participate in the EU programmes ‘Media Plus’ and ‘Media Training’ (European Commission, 2013b).

It is important to note a gap may exist between the need to tackle media freedom in these countries from multiple perspectives and the effective scope of the *acquis* itself. In this regard, the fact that the EU could intervene with broader actions on media freedom within the implementation of the *acquis* procedures whenever dealing with the countries that aspire to become part of the Union must be seen as an important and essential instrument to foster media freedom. Within this framework, the *acquis* should be interpreted in the light of existing standards, including those developed by CoE and OSCE on media pluralism and media freedom, especially since all candidate countries are members of the CoE and OSCE and are already required to fulfil these standards. The EU is thus entitled to promote policies and to monitor the implementation of the *acquis* according to parameters that rely on the fundamentals of the rule of law and democracy, e.g., tackling the lack of independence of the NRAs that deal with audio-visual media services, demanding legislation on media ownership and media ownership transparency, and for more effective independence for PSBs. These issues are not explicitly stated in the *acquis* or in the legislation recalled by the chapters, but are essential for effective democratic reforms and thereby contribute to the political standards expected of any future Member State.

In this respect, the approach of “fundamental first” should be exploited effectively through Chapter 23 on ‘Judiciary and Fundamental Rights’ and Chapter 24 on “Justice, Freedom and Security” that are also essential for freedom of expression, as the establishment of an independent and efficient judiciary is of paramount importance for the rule of law and for the respect of fundamental freedoms. Member States have to effectively guarantee respect for fundamental rights, as guaranteed by the *acquis* and by the Fundamental Rights Charter.

– The Progress Reports

In the framework of the accession procedures and, specifically, in the framework of the annual EC enlargement strategy, the EU monitors the progress of countries in implementing the *acquis* through periodic reports (‘Progress Reports’) that assess the level of compliance of the legislation of that country with EU standards. The Progress Reports are a key instrument for the advancement of the accession procedure: the country is mainly evaluated on the compliance of its legislation with the EU *acquis*. However, these Progress Reports cover multiple fields of the accession process and it is unlikely for them to focus on the details and specifics of the institutional and legal aspects of media freedom or, more importantly, on their application and implementation. In addition, the Progress Reports are policy documents and have the specific goal of evaluating the set of accession criteria. They are not analytical documents, but rather checklists based on a list of set criteria. Therefore, they do not analyse the implications of changes in the media sector on the democratic capacity, legitimacy and sustainability of accession societies. For instance they may be more focused on the transposing of the legislation rather than on the quality and impact of its application.

In fact, notwithstanding the importance of the Progress Reports, it must be stressed that compliance with the EU *acquis* (including in the meaning of *acquis* also the rules on fundamental rights) does not automatically mean an effective improvement in the media freedom in a given country. In many cases media experts acknowledge perfect compliance of the formal legal framework with European standards in the Western Balkan countries, but a substantial non-alignment in practice (Petkovic, 2013). The effective implementation of the legal framework must be highlighted as a much more significant problem, as opposed to the formally and rather well developed media laws. It appears that the Progress Reports function as an excellent starting point for gaining an indication of the processes in the media freedom area. However, there is no form of regular standardised and specialised monitoring, focusing on the application and implications of the legal and institutional framework, which could as a sort of *ex post* assessment analysis.

– Financial support

The accession strategy also benefits from the assistance and financial support of the European Union, which is one of the factors that increases the influence of the EU compared to other transnational organisations. Financial help is provided in order to support and facilitate the application of the transition policies.

The main instrument provided by the enlargement policy is the Instrument for Pre-Accession Assistance (IPA). Through the IPA, the EU supports reforms in the enlargement countries with financial and technical assistance, which has had a large impact on the protection of freedom of expression. In the period between 2007-2013, over €27 million of pre-accession assistance was provided to help Western Balkan countries address the challenges relating to freedom of expression (European Commission, 2013b). The IPA funds are managed by DG ELARG that distributes them to the European Union Delegations in each country. The Delegations then assign the grants at local level (Giacinti, 2014).

The European Union intervenes with the IPA in four main directions, aiming at influencing the structure of the media landscape in the area: supporting journalism, in particular through a project jointly managed with UNESCO, aiming at improving ethical and professional standards in journalism and to develop

journalists' self-regulation and media literacy (mostly through structural support to the initiatives) (Giacinti, 2014); supporting industry through the development of an enlargement strategy for the support of the media and facilitating networks of media stakeholders; supporting the establishment of solid PSBs, through direct support to the European Broadcasting Union for a partnership aiming at enabling the democratic role of public service media in the enlargement region (European Broadcasting Union, 2012) and digitalization of media archives (Giacinti, 2014); supporting the South-East European Media Observatory¹². This Observatory is composed of civil society organisations from the region, with the goal of enhancing freedom and pluralism of the media in SEE. One of its areas of focus is media reform; it also acts as a forum for debate and discussion and conducts research and monitoring of the media outputs. Moreover, the EU also provides legal assistance to countries in drafting media legislation (i.e. through the Technical Assistance and Information Exchange Instrument (TAIEX)). The IPA II is expected to be Commission's long term financial commitment to freedom of expression. It supposed to be conducted in cooperation with key institutional partners, for example the Council of Europe, OSCE, OECD (European Commission, 2013d). Through consultations with stakeholders, with other European institutions, such as OSCE and CoE, and with state representatives on the recent Guidelines for Media Freedom and Integrity (see below), the EC is trying to address the countries' needs on media issues in a more tailored way and to define a more efficient and effective strategy for assistance to countries (country strategy papers covering seven years of assistance). In this regard, DG ELARG is working with the Council of Europe on the support of the judiciary (Giacinti, 2014).

Due to the multitude of EU agencies offering financial support in the area of media freedom and the variety of projects in which such assistance is included directly or indirectly, it would be extremely difficult to list all the external help that has been provided in this area (Puddephatt et al., 2012). However, clear trends in the way such assistance is provided can be outlined. The importance that the EU puts on the EU neighbourhood region (Western Balkans, but also other countries) can be seen in the share of funds directed towards this region, which constitutes 40% of all media assistance. Nonetheless, the EU is still lagging behind other donors in the area of media freedom assistance, including bilateral funds of EU Member States (Puddephatt et al., 2012).

Despite the perception of EU financial assistance programs as difficult and bureaucratic (Puddephatt et al., 2012), all national experts interviewed for the preparation of this report (*ex multis* Petković, 2013) stress that the distribution of IPA is thus a policy instrument per se. It is at the core of the EU conditionality, especially in the upcoming period, when the IPA funds could be withdrawn and re-distributed in the case of under-performance of certain beneficiaries (see European Commission, 2013d). Many of the funds in the media assistance mix include EU visibility programs (Puddephatt et al., 2012), which often result in advertising budgets to be distributed by the state, at times under rather arbitrary criteria. These (in essence) advertising budgets can only very marginally contribute to the media freedom and pluralism in the region. Another risk of the suboptimal use of the financial resources is the frequent use of organisations which are external to the region to carry out the projects (Puddephatt et al., 2012) instead of supporting local media or NGOs and contributing to their viability.

– The enlargement agenda for media freedom and integrity

Despite the high level of commitment by the EU to media freedom and pluralism, indicators for measuring the aspiring countries' compliance with the EU standards and conditions in the field (policy strategy of the Enlargement, based on the agreements, the Progress Reports and the negotiations of the relevant chapters) have been often perceived in the past as not being perfectly aligned with the specificities of the individual countries. Despite the generally high level of EU commitment, a more context-based approach to each enlargement country is needed. On one hand, this is particularly important in order to fine-tune external

¹² <http://mediaobservatory.net/about>

assistance according to the needs as well as to the local capacities to absorb the assistance provided. On the other hand, it is as important in order to secure the collaboration of local political elites, or at least to neutralise their resistance. In the Western Balkans, there have been examples of prolonged resistance by the elites to conduct the changes *de facto*, although *de jure* they strictly follow the accession process requirements (Jusic et al., 2013). Without understanding and working with the local elites, this type of situation may be inevitable.

The inconsistency between the legal framework and its local implementation also highlighted the need to define and proceed with more effective measurement of media freedom and pluralism in the region. In this respect, the 2013-2014 Enlargement Strategy aims at creating the conditions for a more region and country tailored policy on media freedom.

As already mentioned, according to the recent approach to fundamental rights in the accession process and according to 2013-2014 Enlargement strategy in particular, the "Commission has been prioritising freedom of expression and the media in the EU accession process" (and its "financial and technical support" (DG Enlargement, 2014), as already outlined¹³). This is taking place as a major follow up to the actions of the European Union in the area in the last years and specifically, as mentioned also by the Enlargement Strategy itself, according to the political commitments the EU took on at two main regional conferences. In 2011 and 2013 in fact, the Commission, together with the European Parliament, held the conferences *Speak Up! And Speak Up!*¹⁴ that "brought together hundreds of key stakeholders from the media, civil society and national authorities" (European Commission, 2013d)¹⁵. These conferences were perceived by the stakeholders to be significant moments of policy building, as they gathered the most important actors in the region from the media sector and the Commissioner responsible for Enlargement personally committed himself to fostering media freedom in the region.

According to the conclusions of the first *Speak Up!* conference, the European Commission identified four priorities for regional action: "improvement of the performance of public sector broadcasters; effective mechanisms of media self-regulation; judicial practices in freedom of expression cases and capacity building of the judiciary in this regard; and the introduction of an EU award for investigative journalism in the Southeast Europe IPA region" (*Speak up! 2 Conference*, 2013, p. 2)¹⁶.

The *Speak Up! 2 Conference* of 2013 has been perceived as a landmark event in the media policy development of the Western Balkans because, in its conclusions¹⁷, the Commission committed itself to undertaking major financial and policy efforts in the area of freedom of expression. In particular, the conference conclusions stressed the need for candidate countries and potential candidates, following Chapter 23, but also Chapter 10, to address freedom of expression in the action plans, which would contribute to the credibility of the accession process by defining in a more precise and detailed way the

¹³ The strategy stresses the importance IPA as a policy instrument: "The launch of IPA II is also an opportunity to ensure an even closer link between the enlargement strategy and the priorities for assistance. IPA II introduces some important innovations, notably the focus on defining long-term policies and strategies in a limited number of priority sectors, which will be aligned with the needs and capacities of each country. Clear targets and realistic indicators will be set and linked to multi-annual sector assistance. If countries meet the necessary standards of public financial management, they will be able to benefit from budget support – a further incentive for reform. Incentives will be available to countries that advance on their reform path. In case of underperformance, funds will be reallocated. The management of IPA programmes will be further streamlined, mainly through fewer and larger projects".

¹⁴ *SpeakUp2* http://www.speakup2conference.eu/en/home_95.aspx

¹⁵ Around 500 participants in each conference (Petkovic B, interview of 20th October 2013)

¹⁶ The European Commission commissioned a study asking for an analytical and evidence-based overview of the media situation in the region and asking recommendations for a media (see Western Balkans and Turkey Media and Freedom of Expression Fact-finding and Scoping Study <http://www.speakup2conference.eu/files/cms1/wbt-media-study635062109588840375.pdf>)

¹⁷ Conclusion of the conference here: http://ec.europa.eu/enlargement/pdf/speak_up_2/20130801_speakup-conclusions.pdf

relevant conditionality steps¹⁸. The increased attention to the rule of law, as element of the enlargement process, positions issues such as the protection of fundamental rights and judicial reform early in the timeline of this process (see above). Putting the fundamentals first allows more time for the countries to demonstrate the outcomes, sustainability and irreversibility of the reform implementation. This trend is expected to have a positive influence on media freedom in the region as all experts interviewed for this study unanimously claim that the lack of proper implementation of the legal framework is a major and all-encompassing problem.

Moreover, the conference conclusions call for adding investigation of violence and threats against journalists as conditionality in the accession process. Therefore, efforts by governments to investigate cases of violence and threats against the media will have to be included in the action plans. The conference conclusion also called for a specific training of the judiciary on media issues. They further stressed that "Parliaments need to take up their unique role in meeting European standards in media legislation" as they also provide a link with civil society (the European Parliament being a "good example of comprehensive parliamentary vigilance in media freedom matters" (Speak up! 2 Conference, 2013). The conclusions also stressed the need for a stronger and more effective competition and sustainability of the media market, stressing the need of actions to fight against informal economic pressure on the media, to ensure "transparent and unbiased use of public money in the media sector" (government advertisement included) and for a better internal governance of media outlets. Moreover, the conclusions underline that professional journalists should organize themselves in more structured ways as they need to develop their self-regulation and to improve their labour conditions. It is essential that they maintain their capacities to defend the communities and raise the important issues the governments the issues of interest to the media community or to conduct a social dialogue with employers are essential. On the other side, media outlets need to properly implement labour laws. The Conference calls also for reinforcing the public service broadcasting and for ensure freedom of new media.

The commitments taken up by the European Commission in the conference conclusions included using the Enlargement Strategy Paper and the Progress Reports as policy tools for the implementation of the conference conclusions; consistently address the topic of freedom of expression and its fundamental importance for EU membership for the accession countries; ensuring that media freedom forms a substantial part in accession negotiations and that the issue is tackled, as mentioned above, under the new approach to Chapters 23/24 and the related action plans) and use the same procedure to tackle media freedom; also with countries not yet negotiating, . The Commission committed itself to and maintaining and strengthening co-operation with the CoE and the OSCE at any level, "on the field" and at political level.. Such co-operation, as well as the support received from the European Parliament, enables these persistent issues to be dealt with in a comprehensive way. The scope of the EU commitment sends an encouraging signal regarding the importance of media freedom issues in the region (Speak up! 2 Conference, 2013).

Another important issue that regularly emerged from interviews with experts was the lack of continuity and long-term commitment to particular media assistance programs. Therefore the initiative by the European Commission to develop a long-term policy approach for EU financial assistance for the period 2014-2020 with regard to freedom of expression issues in the Enlargement countries constitutes a welcome step. The approach acknowledges the process of addressing the issues as one requiring engagement over a longer time period. In particular, the Commission is committed to: supporting professional organisations of

¹⁸ For the countries already negotiating, the comprehensive action plans as required within the new approach to Chapters 23/24, need to consistently address freedom of expression issues and propose credible and concrete solutions. The countries not yet negotiating Chapters 23/24 will identify a comprehensive list of priorities and concrete actions in the area freedom of expression, completing the existing arrangements with the EU where appropriate. The implementation will be assessed in their regular dialogues with the EU. http://ec.europa.eu/enlargement/pdf/speak_up_2/20130801_speakup-conclusions.pdf

journalists and media to develop their capacities by using the Civil Society Facility; working with partner organizations (e.g. the CoE and OSCE) to support the long term training of the judiciary as initiated by the countries in the region; promoting and financially supporting contacts between communities of journalists in the Enlargement countries; implementing the European Commission Award for Excellence in Investigative Journalism as of 2014; and continuing the dialogue with media communities and organisations in the Enlargement region (Speak up! 2 Conference, 2013). These initiatives aim to address some of the main concerns relating to media freedom in the region, also by supporting stakeholders and entities that have the potential to play a central role in improving of the current situation. In addition, their long-term approach is essential in providing stability and predictability with respect to the policy in the region (Speak up! 2 Conference, 2013).

According to this commitment, DG Enlargement has prepared guidelines for the Commission's long-term (2014-2020) engagement in comprehensively assisting countries to reach a satisfactory level of media freedom (DG Enlargement, 2014). After consultation with stakeholders, the guidelines, which were finalised in early 2014, should serve as a basis for supporting media at both the regional (multi-beneficiary) and individual country levels and as a point of reference for the future formal documents of DG ELARG, the Multi country strategy paper and the Action programme (Giacinti, 2014). The guidelines propose to group future assistance around three major directions: (1) putting in place an enabling environment for freedom of expression and the media, adopting correct media laws to improve judicial practices according to Article 10 of ECHR and addressing the economic, market based aspects of media freedom; (2) encouraging and assisting the media in adhering to the principles of good governance at the level of individual outlets (financing transparency, ethical and editorial codes, mechanisms to deal with complaints from the audience, etc.); and (3) continuous engagement with, and support of, media professional organisations as drivers of the expected change (as a basis for self-regulation, capacity building for dialogues with administrations, etc.) (DG Enlargement, 2014). The guidelines are structured as a "draft results framework" (DG Enlargement, 2014): they provide a list of measurable indicators that are related to specific results to be achieved and then identifies a list of possible means of verification (MoV) for each group of indicators (reference to the guidelines). The collection of data will include both qualitative and quantitative assessments: DG ELARG will be responsible for supervising the Guidelines in cooperation with EU Delegations in the region, international organisations and civil society networks active in the area of media freedom and integrity (DG Enlargement, 2014).

The CoE, OSCE, UNESCO and the European Broadcasting Union have been consulted on these guidelines. Additionally, a multi-stakeholder consultation took place in Brussels and created a dialogue between many experts, including the media community, journalists' professional organisations, NGOs and think-tanks with an interest in promoting freedom of expression and was open for on-line consultation for the participants at the Speak Up! Conference (Petkovic, 2013). This initiative provides a positive sign of an existing dialogue as a basis for future cooperation between the stakeholders.

The initiative of the Guidelines, therefore, opens new perspectives on the European policy on media freedom in the region: it tries to address what in literature has been referred to as the "opaque imitation of external models" through a monitoring system that is rooted in the political and social environment of a specific country (Zielonka et al., 2011). It intervenes on the core elements that structurally hamper the development of a free media environment and create effective conditionalities alongside the direct involvement of government and civil society media stakeholders. In this regard, this new policy also aims to implement a strategy that is developed directly by actors in the media sector, starting from journalists up to the media industry; this aspect is essential to ensure a long-lasting and sustainable effect of the EU intervention in the area, even after the accession of the countries in the European Union.

Moreover, the guidelines endorse the 'media freedom and integrity' approach, the result of the research of the Media South East European Media Observatory. The Observatory, an initiative within the framework of the Civil Society Facility Program, is developing a new monitor to assess 'media freedom and integrity', tailored to the needs of the region. The indicators have been identified according to the quality of media policy, but also according to the level of media structures and institutions, and that of media practices and content¹⁹. This monitor can be seen as a useful policy instrument to create more tailored indicators and assess more substantial conditions to effectively intervene in the structure of country specific media landscapes.

3.4 EP Pilot Projects for the European Centre for Press and Media Freedom

Finally, another specific EU initiative on media freedom is the recent project on the European Centre for Press and Media Freedom (the call was launched in September 2013 and the project will run from 2014 to January 2015). This initiative comes directly from the European Parliament that approved a line of budget (one million euro) under the EP Pilot Projects to the creation of a European Centre for the protection of journalists. This initiative falls outside the scope of the enlargement strategy *stricto sensu*, but the countries of EU Enlargement are targeted by the territorial scope of the grant that includes the EU28 and the Candidate countries.

DG CONNECT was in charge of selecting the projects to be funded and distributing the grants. The project is promoting a number of initiatives to tackle the lack of effective media freedom, starting from the pillars of free information, namely the journalists. The grant supports specific initiatives that, taken together, could concretely protect freedom of expression, freedom of information and the freedom of the media, providing a point of reference for threatened journalists. The granted projects, besides the one that involves also the Centre for Media Pluralism and Media Freedom, author of this report ("Strengthening Journalism in Europe: Tools, Networking, Training" - Centre for Media Pluralism and Media Freedom (European University Institute), in cooperation with Center for Media and Communication Studies (Central European University)), are: "Strengthening Journalists' Rights, Protections and Skills: Understanding Defamation Laws versus Press Freedom" - The International Press Institute; "Taking action and mapping violations of media freedom and plurality across the European Union" – Index on Censorship (The Writers and Scholars Educational Trust); "Safety Net for European Journalists. A Transnational Support Network for Media Freedom in Italy and Southeast Europe" - Osservatorio Balcani e Caucaso (Fondazione Opera Campana dei Caduti), in cooperation with the South East Europe Media Organisation (International Press Institute), Ossigeno per l'Informazione and Evgenia Siapera". The project is now operative and its different components are very active in providing tools and structures which promote safety, information and training for journalists (European Commission, 2014a). As a result of this project, journalists will receive necessary support, the visibility of problems in the area of media freedom will be increased, and more information will be available about the particular areas that need further support and policy interventions. The visibility of the Pilot Project for a European Centre for Press Freedom is progressively increasing in the Western Balkans, as it involves NGOs that are very active and effective in the area (i.e. Osservatorio Balcani e Caucaso, SEEMO (in this case the South East Europe Media Organisation) and because it offers practical tools for helping journalists and proposes, at least in some projects, an interesting tailored approach on important issues like defamation (for instance through the IPI "perception index" to assess the effect that criminal and civil defamation proceedings have on press freedom in specific contexts).

The geographical scope of this project highlights that the approach of the European Parliament to media freedom is very comprehensive and "universal", as it takes into consideration, under the same initiative, both EU countries and enlargement countries. The approach of covering both Member States and

¹⁹ <http://mediaobservatory.net/>

accession countries is also beneficial to providing continuity, stability and predictability of EU policies and standards in the area of media freedom. However, the obvious weakness of the project also emerges in this context, namely its one-year duration, which does not secure its continuity. Selecting the most promising and successful initiatives of the project and supporting their long-term application would constitute a positive step in order to optimize their impact.

3.5 Calling for better coherence between the EU policies on media freedom

These latest evaluations on the ECPMF 2013 project can be linked to another consideration: accession processes have so far been kept outside the specific internal media policy of the EU. Lessons from the previous accession waves demonstrate the necessity of relating the accession and internal policy processes in order to guarantee continuity. In this regard, from a policy perspective, the EU should be more consistent and consider media freedom as an important issue to be fostered at any institutional level as this is the direction it is taking in the framework of the enlargement strategy, by asking for the respect of 'fundamentals first'. Moreover the EU should consider media freedom and pluralism as a specific 'meta-chapter' in the *acquis communautaire* and an explicit EU competence, to be tackled, at the accession level first, with proper substantial conditionality that could have a permanent effect on the structure of the media market and the culture of the journalistic profession. Moreover, this competence and the need to respect this *acquis* should be stressed also once the country has entered the Union, in order to avoid the application of different standards to EU potential members and EU Member States (in this respect, see the recent conclusions of the Council of the European Union. Foreign Affairs, 2014). Interestingly enough, some of the most alarming signals amongst Member States, including in the decrease of the popular indexes of media freedom (e.g. Freedom House), come from Member States that have recently gone through the accession process and as such, through rather rigorous monitoring and scrutiny of market and democratic standards.

This also demonstrates the importance of the continuity and consistency of EU policies, while bridging the accession process and the monitoring of the media freedom and pluralism standards in the Member States. Such consistency can ensure not only the establishment of an appropriate legal framework and relevant institutions, but also an efficient and sustainable commitment to the application of this legal framework and to institutional capacity building. Furthermore, a better monitoring strategy of the media landscape, in order to plan focused interventions in each country, is recommended. Existing experience and on-going implementation of comparative in-depth monitoring tools can be useful in the region of the Western Balkans as well as in the EU countries. The MPM tool implementation (mentioned in section 3.2 in this Chapter) could be a valuable instrument for monitoring and assessing not only the risks to media pluralism, but also the potential policy instruments for intervention in each given country. As mentioned at the beginning of the third part of the current report, the MPM is currently being simplified and pilot-tested in a number of EU countries. A streamlined version of this complex instrument, developed after the pilot testing, can be applied in the accession countries, which will provide the EU with wealth of information regarding media freedom and pluralism. It will also help align these countries to the standards of media pluralism and media freedom required of Member States. Through its holistic perspective, the MPM would help to analyse and assess the threats to media pluralism in a very comprehensive way. It would thereby better analyse the problems in the implementation of legal frameworks and would go beyond the limited scope of the Progress Reports.

4. AN IMPACT ASSESSMENT OF EU POLICIES OVER MEDIA FREEDOM: THE COUNTRIES' PERSPECTIVE

When it comes to the evaluation of the EU enlargement policy on media freedom, all stakeholders and media experts interviewed for this report highlighted two main points (Kurkowski, 2013; Lani, 2013; Petkovic, 2013; Gajin, 2014): on the one hand the EU, at least thus far, has heavily influenced the regulatory framework and media reforms in the region but, on the other, it has faced many difficulties in ensuring the structural and long-term application and sustainability of the results achieved. As Lani and Cupi put it, the legal framework is "written according to European standards and then ... applied according to Balkan standards" (Lani et al., 2008).

The EU's principal influence on media policy in the six Western Balkans countries has mainly centred around defining a legal framework for the protection of freedom of expression (in particular in relation to minorities and the status of journalists), the implementation of the AVMS Directive, the creation or consolidation of public service broadcasting (PSB), the establishment or consolidation of independent authorities in the field of communications and media, and favouring technological development (see country profiles below). Despite the differences between Western Balkan countries, and the greater progress of those countries that are closer to accession than others (i.e. Montenegro), the results of EU action are similar in principle. As outlined in Part 2 of this report, the general legal framework for freedom of expression is well developed in Western Balkan countries, frequently even more developed than in the old EU Member States; media laws are progressively shaped according to AVMS Directive standards; state televisions have been converted into PSBs; action plans for the development of media technologies have been established. Nonetheless, these efforts have not had the effect of changing the core characteristics of the media landscape in the area, nor have they been able to stop personal attacks on journalists or on members of minority groups. Moreover in some cases (i.e. the former Yugoslav Republic of Macedonia) the tentative implementation of the AVMS Directive was used as a tool for wider government control over electronic media (Manevski, 2013). Other problems also persist: throughout the region PSBs are still weak; media authorities are not fully independent; ownership transparency rules are ineffective or non-existent; and the digital switchover has been delayed. Moreover, some of the main 'hot topics' in the region, such as the sustainability of the media market and the transparent ownership and financing of media outlets, have not received the adequate attention. In addition, the very relations between the media, political powers and business entities create dependencies and undermine journalistic professional standards (Lani, 2011).

The problems faced by EU media policy in the area are mainly caused by political parallelism of the media in the Western Balkans countries, by an excessive involvement of governmental authorities in the process and by the lack of investment, at least in the past, in grassroots initiatives and in training the judiciary. In an attempt to maintain their grip or influence on the media, local political elites resist many of the EU initiatives, although they almost never do so openly. The perception that the EU's interest in media freedom will decrease once the country has joined the EU acts as an incentive for governments, which may be more attracted to EU accession than to an effective accomplishment of democracy, to adopt a 'tick the box' attitude or 'façade' reforms. Evidence of this type of approach by politicians in the accession countries demonstrates once again the importance of continuity and consistency in EU media freedom and pluralism policy, both internally and externally.

Other important initiatives that may effectively integrate formal compliance with legal standards with an effective implementation of the law in a receptive and ready-for-change environment are the recent developments of the enlargement strategy, the emphasis of "fundamentals first". In particular, the emphasis on the effective implementation of chapters 23 and 24; the efforts by DG ENLARG to involve all

stakeholders in the process and in the definition of priorities and tools to tackle the problems of the media sector; the willingness of DG ENLARG to coordinate with other international institutions in the region.

Another important and relevant issue and dilemma that EU media programs face is who to collaborate with when implementing different projects in the Western Balkan countries. Dealing with this issue is crucial for the success of any external initiative. Two main options may be identified. In the first case, the projects and policies are directly related to the government, regulators or other institutions and outlets. In this case, the issue that the EU faces, as any other external entity, is to secure the collaboration of the local counterparts. Usually, local counterparts are officially willing to collaborate due to the general importance and attractiveness attached to the EU membership. However, only a close study of the relevant power structures and relations, and a good understanding of the interests within these structures can guarantee an appropriate approach. As the experts interviewed for this study emphasised, the political volatility in these countries is often reflected not only in the actual governments, but also in all other state or public institutions, which follow the changes in government changes with their own politically related or inspired appointments. In order to avoid discontinuity in the external assistance, any media freedom initiative should include a wide spectrum of political factions.

The second case is related to projects and policies, which (also) involve non-governmental actors, such as trainers for capacity building programs, or research organisations conducting monitoring and assessment. Here the major dilemma is presented by the choice between local and foreign counterparts. On the one hand, there are concerns about the lack of local knowledge of foreign organisations (Erichsen et al., 2013) and, therefore, there is preference for local counterparts. There is also a common view that collaborating with local organisations and experts contributes to their financial assistance and sometimes even guarantees their survival. However, due to the highly polarised and politicised local spectrum and the sometimes overwhelming struggle of "patriotism versus professionalism" (Petruseva, 2010), at times it may be preferable to collaborate with external experts. In addition, bringing in external experts is often perceived as contributing to fostering a professional culture. The option preferred by the local experts interviewed for this study appears to be a hybrid version or regional exchange and collaboration.

4.1 Countries candidates for EU membership

4.1.1 Albania

1. Media freedom and legal framework

The EU has been very influential in accelerating legislative reforms in Albania, although the reforms did not prove to be effective, sometimes because they were too uncoordinated and unstable, what Londo calls "floating laws" (Londo, 2013c). With regard to media pluralism and freedom, as one of the short-term priorities in the European Partnership with Albania of 2008 (Council of the European Union, 2008), the country has been asked to substantially amend its legislation. The areas identified for improvements were numerous and demonstrate the breadth of concerns regarding media freedom and pluralism in the country. Albania was asked to adopt effective standards to ensure transparency in media ownership and to fully implement currently applicable legislation on print media and journalistic independence. The development of comprehensive electronic media rules in line with the European standards was also among the demands (Council of the European Union, 2008). With respect to it, the country was, for instance, asked to create the conditions for a competitive market for electronic communications networks and services and to strengthen the expertise and capacity of the Telecommunications Regulatory Authority. Regarding broadcasting, Albanian legislation was required to be aligned with the European Convention on Trans-frontier Television and the Audiovisual Media Services Directive. The strengthening of the role of the National Council on Radio and Television was also seen as necessary. Finally, the country needed to adopt a strategy for the development of the radio and television sector and an updated national analogue and

digital frequency plan for radio and television (e.g. that spectrum is allocated on a fair and non-discriminatory basis and that spectrum policy is effectively implemented). Finally, key steps were necessary to improve the independence of the public service broadcaster and encourage the active participation of NGOs and other civil society organisations in government decision-making processes, as well as to improve journalistic quality in the country (Council of the European Union, 2008).

The EU position in relation to the above issues was reiterated by both the SAA and the 2010 Opinion of the European Commission on Albania's application for membership. The SAA that came into force in 2009 (European Commission, 2009), explicitly establishes the obligation of the Parties to co-operate in the audio-visual field (Article 102), in particular by promoting the audio-visual industry, training journalists and media professionals and reinforcing media independence. Articles 103 and 104 also establish the duty to co-operate in issues concerning the information society in general and the electronic communications and services in particular. In addition to the above, several other provisions of the SAA indirectly seek to protect media freedom and pluralism (e.g. those regarding the provision of services, law enforcement and competition rules, intellectual, industrial and commercial property; consumer protection, justice, freedom and security and cultural cooperation). The 2010 Commission Opinion on Albania's application for membership of the European Union stated that the country was facing serious issues with regard to media freedom and independence resulting from the lack of independence from political and business actors (European Commission, 2010a).

Unfortunately, EU conditionality largely "failed to ensure absence of political and financial pressure on key media institutions" (Londo, 2013c). The EU has monitored the adoption of a new audio-visual media law, which, as highlighted also in the Progress Report, has not succeeded in "providing a selection procedure for the governing bodies of the regulator and the public broadcaster that guarantees their independence" (European Commission, 2013e). Political parallelism of the media calls for greater transparency in the allocation of public funds in an already weak media market. An effective policy on political advertisement is still missing. As of 2011, Albania has transposed the Audiovisual Media Services Directive into domestic legislation. In the context of recent amendments to the law transposing the AVMSD, tension between the conservative government and left-wing opposition MPs arose regarding the appointment procedure of the regulator. The ruling party was not willing to accept the opposition's proposal that Parliament should choose the final non-elected member of the regulator through a qualified majority. The ruling party argued respectively that there were already sufficient guarantees and that "there was no reason to make an exception in this case, since other bodies are also elected through simple majority" (AMI Albanian Media Institute, 2013). A more pro-media pluralism approach is expected of the current left-wing government.

The EU delegation in Tirana has organised a number of events and seminars concerning media freedom and the freedom of expression (EU Delegation and the Ministry of European Integration of Albania, 2013), and has also adopted a local strategy for the implementation of the EU Guidelines on Human Rights Defenders, which incorporates freedom of expression and media reporting on human rights (European Union, 2010). This contributes to the image of the EU as being concerned with media freedom and actively involved in policies aimed at promoting and supporting it.

EU financial instruments, mainly IPA ones, support production of audio-visual content. The general funding allocation of the EU to Albania for the year 2013 is 95 million Euro, which aims at strengthening priority of the agenda for the Enlargement Strategy 2013-2014. This initiative indirectly covers media pluralism and freedom issues, by supporting initiatives that, in the logic of "fundamental first", seek to strengthen the rule of law, including setting up a system that secures an independent, efficient and accountable judiciary, the establishment of a professional, de-politicised and non-corrupt public administration with transparent, merit-based appointments/promotions and through education and training and the protection of vulnerable groups, especially minorities. Moreover, in 2013, the EU granted 1.5 million Euro to Albanian civil

society organisations in support of civic initiatives and capacity building. According to its Delegation in Albania, media organisations receive an important part of this grant²⁰. However, despite the above EU initiatives, much remains to be done by the Albanian government to ensure compliance with EU standards in the media sector. Recent examples that illustrate the concerns that arise include corruption, low salaries for journalists and the granting of State aid to outlets favouring the ruling party (Likmeta, 2013). These examples, when compared to the 2002 Human Rights Watch Report, which reaches similar conclusions, demonstrate that not much progress has been made over the past decade (Human Rights Watch, 2002).

2. Public service broadcasting

The establishment of a public service broadcasting, or rather the transformation of the state broadcasting into a public one has proven to be a difficult operation in Albania. The Albanian public service broadcaster, RTSH, shares with the other PSBs of the region a low popularity rate and limited independence from political influence. This is a regular feature of PSBs in the region (Orban et al., 2013) and a very important structural component in the Albanian case. The tradition of the media being an extension of the government was even stronger in Albania than in the other Western Balkan countries covered by this report due to the greater intensity of censorship and pressure during the pre 1989 period. Although considerable time has passed since then, this period created the initial model and image for state broadcasting, as well as the political culture of interaction with and pressure over the media, which have since been changing since, although not with the speed that would be desirable. The political and journalistic culture of the past and its structural characteristics created difficulties in the transformation of the state broadcasting into a public broadcasting. Any EU policy in the area must take due account of this and not stick to the copy-paste approach of transposing EU legislation (Londo, 2014).

Most of the external media assistance that was received by the PSB in Albania was aimed at technical modernisation, support for content production and training of journalists. The EU however is not the major donor in this area and is being surpassed by different unilateral external support programs of institutions such as DW and ZDF (Londo, 2013c). The EU has provided support through the programs of EBU, such as the EBU Special Partnership Program, devoted to the exchange of practices, digital archiving and management related consultancy (Londo, 2013c). However, the assistance provided to the PSB does not seem able to tackle its most significant problem, and to be capable of transforming the culture of media, from one that is dependent on and closely related to the political power, to one that works only for the public good. According to the literature, the PSB in Albania has received less assistance than the private media, which calls for a more structured intervention of the EU (Londo, 2013c).

Legal expertise on RTSH has also played a significant part of international assistance, starting with the process of drafting Law on Public and Private Radio and Television, mandating "RTSH to provide public service content and to respond to the diverse needs of society" (Londo, 2013c). The legal advice on media regulation provided by OSCE, Council of Europe, EU, and EBU aimed at supporting the establishment of a functional, as well as politically independent public service broadcaster, capable of serving the public. In 1997, Article 19 recommended regulation that safeguards editorial and operational independence in order to tackle one of the key problems of PSB, namely political pressure (Londo, 2013c)

3. Media market

As in the other Western Balkans countries, the media market in Albania is still weak and fragmented. As "a consequence, transparency of ownership, especially transparency of media funding, remains a controversial

²⁰ For the organisations which have profited from IPA funds, please see:

https://www.google.com/url?q=http://eeas.europa.eu/delegations/albania/documents/funding_opportunities/copy_contracts_ipa_csf_2012.xls&sa=U&ei=T3jhUqmDHe_jyAGKklCIAw&ved=0CAkQFjAD&client=internal-uds-cse&usq=AFQjCNFggH9b3Rd6nqPIBSwy0IM7AxArgg

issue” (Londo, 2013c), thereby limiting the reliability and the effective pluralism of the information such a market can provide. However, the financial viability of the media has not deteriorated due to the economic crisis, as often the media appear not to be financed according to a market logic, but to be politically instrumental (Lani, 2013). Therefore, besides the *acquis*, the EU should also place stronger emphasis on monitoring the compliance with European ownership transparency standards and on transparency and fair rules of media financing.

4. Status of journalists

The condition of journalists in Albania appears to be of particular concern, as the profession is underdeveloped (Londo, 2013c). Journalists are not well trained, do not follow any professional or ethical standards, and they are culturally reluctant to do so, being familiar to the political parallelism of the communist period (Elbasani, 2014). In order to have a permanent impact on the media sector in Albania, the EU should strongly intervene with programs dedicated to journalism ethics and culture, to facilitate the deliberation and establishment of working professional standards, as well as capacity building for self-regulatory bodies to monitor if these standards are observed.

The current journalistic organisations are concerned predominantly with the labour rights of journalists (Londo, 2013c), which is an important and necessary issue to be tackled, but is not sufficient. The efforts of mainly IREX, but also by other donors, to support the establishment and functioning of a journalistic union and the problems that they faced in the process, such as insufficient interest and support from the journalists themselves (Londo, 2013c), are a clear sign that any form of external assistance needs to take into consideration and work on the professional culture.

4.1.2 The former Yugoslav Republic of Macedonia

1. Media freedom and legal framework

The association process of the former Yugoslav Republic of Macedonia to the European Union dates back to 2000, when the Stabilisation and Association Agreement (SAA) negotiations started, making the former Yugoslav Republic of Macedonia the first Western Balkan country to initiate this procedure. One year later, the former Yugoslav Republic of Macedonia was also the first country to sign an SAA, in April 2001 (Council of the European Union, 2001), and, in 2004, it was the first country in which the Agreement came into force. As a consequence, the former Yugoslav Republic of Macedonia acquired candidate status in 2005. However, the accession progress of the former Yugoslav Republic of Macedonia has since slowed down, as has the influence of EU. To a larger degree than most of the other Western Balkan countries (apart from Serbia), the EU membership of the former Yugoslav Republic of Macedonia has been conditioned by changes in the very basic statehood elements requested by the EU (in the case of the former Yugoslav Republic of Macedonia, the requests are inspired by a single EU Member State, Greece, but nevertheless, the name dispute has become part of the accession process). The perception of unfavourable demands coming from the EU inevitably contributes to slowing down the accession process (Daskalovski, 2013). On one hand, this makes the accession process, or at least elements of it, appear to go against national interests for some Macedonians. This inevitably diminishes potential public support for EU membership despite the evidently positive role the EU plays in the region. On the other hand, the fairly difficult conditionality creates a suitable excuse for local politicians to resist other reforms and policies, which are not in their immediate interest.

Since 2009, the European Commission has started the screening process over the chapters of the Stabilisation and Association Agreement, recognising that the country has sufficiently met the political criteria (European Commission, 2013c). In January 2014, the European Parliament adopted a resolution on the EC progress report reiterating its call to the Council to set a date for the start of accession negotiations without further delay (European Parliament, 2014). In the resolution, the European Parliament regretted the

deterioration of the country's reputation in relation to media freedom, and supported the initiative of the country's Media Institute, with EU support, to publish a 'White Book' on enhancing civil society-media relations (European Parliament, 2014). However, to date the Council has not followed the recommendation, nor has it taken any decision on the matter. The dispute with Greece about the name of the country and the use of symbols is still considered to be a major obstacle to the former Yugoslav Republic of Macedonia accession process.

The SAA of 2001 includes three articles about Information Society and Media. In particular, Article 93 on Information and Communication states that the country will "take measures to stimulate the mutual exchange of information". Article 94 deals with the Co-operation in the audio-visual field, encouraging the promotion of the audio-visual industry and the co-production in cinema and television. Principles of harmonisation of policies in this field regulating content, cross-border broadcasting, intellectual property and satellite and cable broadcasting were also embedded in article 94. Article 95 deals with the Electronic communications infrastructure and associated services, prescribing stronger cooperation in the area of electronic communications (both networks and services) in order to ensure compliance with the *acquis communautaire*.

EU impact on the media environment in the former Yugoslav Republic of Macedonia has been very different throughout the various phases of the State's recent political history. Three stages of media policy development can be identified: (1) from 1991 to 2003 (from the establishment of the independent state until the EU-brokered agreement and the beginning of the SDU government rigorously implementing the Ohrid agreement), the period of establishment of a democratic media system, during which relevant legislation was developed and adopted with the participation of all actors (although the first Broadcasting Law from 1997 was not fully harmonised with EU standards); (2) from 2003 until 2009 (until the beginning of the second term of the VMRO-DPMNE), the period of drafting the 2005 Broadcast Law and its implementation, during which there was wide consensus over the public interest goals in media policy development and its implementation and the emergence of several media outlets; and (3) from 2009 to date, a period that can be described as the "political colonisation of the media sphere", the marginalization of the concept of public interest in media policy and the undermining of political pluralism in the media (Trpevska et al., 2014).

During the first two stages, the role of the European Commission and the CoE in policy development was of central importance. The annual Progress Reports have emphasised key problems with respect to the fulfilment of political criteria and the design of an effective Audio-visual Policy. In addition, during the meetings of the Stabilisation and Association Committee and Subcommittee on innovations, information society and social policy, the European Commission representatives focused on developing the building blocks for a democratic media policy. It must be pointed out that the Media Division of the CoE made a significant contribution to media policy development in the past. Moreover, the cooperation between the European Commission and the CoE at the time positively influenced national authorities, which attempted to apply the basic standards of European policy. Many seminars and conferences were organised in the region, where representatives of EU/CoE bodies and of domestic institutions debated and agreed on the key priorities for further development. Unfortunately, over the latest years (third stage), this cooperation has not been as intensive and the European influence seems to be fading away.

The VMRO-DPMNE government appeared co-operative and eager to address the complex situation in the media. However, in many cases it sabotaged the effective implementation of European standards. For example, in 2011, the State authorities made amendments to the Broadcasting Law that compromised the independence of the broadcasting authority. In particular, the legislation envisaged that the number of the Board members of the regulator (Mitevaska, 2011) would increase from "nine to 15, and that the six new members would be appointed by the country's president, the parliament's anti-corruption commission

and the Electronic Communications Agency, all of which reportedly controlled by the ruling VMRO-DPMNE party" (Reporters Without Borders, 2011). Moreover, these amendments were rushed through by the Parliament thereby undermining the democratic process (Reporters Without Borders, 2011). The proposed amendments to the law of 2011 were among the first steps made by the ruling party to impose political control over the other media. Another case of problematic implementation of the EU media acquis was the Audio-visual media service directive in 2013, that was criticized by OSCE (Nyman-Metcalf, 2013a, 2013b), because it required the registration of print and electronic publications (Manevski, 2013).

Media freedom and pluralism have been violated on a number of occasions in the country. For instance, during the summer of 2011, several private media outlets were closed under the influence of the ruling party, the executive committee of the public broadcaster fired its entire board without providing a reasoned opinion and journalists that were active union members were unjustifiably dismissed (Reporters Without Borders, 2011; Dimishkovska, 2013).

The importance of the level of media freedom in the former Yugoslav Republic of Macedonia for its integration into the EU was reconfirmed when the topic was listed as one of the five priority activities of the High Level Accession Dialogue (HLAD)²¹ between the Republic of the former Yugoslav Republic of Macedonia and the EU, launched in March 2012 to overcome the stalemate in the accession process of the former Yugoslav Republic of Macedonia. The government declared that by the end of 2012, it would fulfil the relevant objectives under the Roadmap for the Implementation of the Priority activities of the HLAD. These objectives were: 1) the amendment of the defamation legislation, improvements in court practices and the strengthening of professional standards; 2) improvements in the enforcement of media-ownership rules and relevant amendments to the legislation (European Commission, 2012). However, these far-reaching promises have been far from being achieved, with the amendment to the Broadcasting Law that sought to undermine the independence of the broadcasting authority constituting only one example.

The TAIEX instrument has been used on a number of occasions for the development of media legislation. Two TAIEX visits were organised for the development of the first Strategy for Broadcasting and later for the drafting of the Law on Media and Audio-Visual Media Services, as well as for the design of the new Strategy for the Development of Broadcasting. In general, these instruments of support have contributed to strengthening the capacity of the regulator, however the media community, during the last expert missions in the context of drafting the new Media Law, generally considered the drafting process to be non-transparent. The IPA instrument has so far not been used to directly strengthen media freedom. A project that may have an impact on freedom of expression and media independence is "Enhancing the administrative capacities of telecom and media authorities for efficient regulation of new digital and multiple play services" (Europe Aid/129857/C/ SER /MK). The Project is still in its initial stages, but it is expected to put strong emphasis on the independence of regulators, which is of fundamental importance for an effective functioning of the entire media sector.

As already mentioned in this report (section in 2.1.2 and in part 4) the draft of law implementing the AVMS directive has been frequently criticized in the former Yugoslav Republic of Macedonia by journalists' organizations and by OSCE (Nyman-Metcalf, 2013a) and by the Council of Europe (Council of Europe, 2013). The criticism questioned the competence of the Agency on Audio-Visual media services to administratively supervise the activities of online publications. As already mentioned in section 2.1.1, in December 2013 two new laws regulating the media were passed (Trpevska et al., 2014) which "exclude monitoring and regulation of web sites" (Manevski, 2014).

²¹ HLAD is part of the process of integration of the country in the EU. It was initiated by the Commissioner Füle himself in March 2012. The aim of HLAD is to put the EU integration to the forefront of the domestic agenda and give it a new boost. The Dialogue aims to enhance the support of the European Commission for the accession process of the country by ensuring a structured, high-level discussion on the main reform challenges and opportunities.

2. Public service broadcasting

In the framework of the enlargement strategy, the Macedonian public service broadcasting shares most of the problems of the PSBs in the region. As a result of many years of financial and production-technology crisis, the public service broadcaster has grossly neglected its obligation to promote cultural pluralism in its programmes. This is particularly apparent with respect to the programmes of smaller ethnic communities, where the number of employees has been drastically reduced over the last years, whereas the time and resources allocated to them do not enable them to successfully fulfil their informative and cultural function (Micevski et al., 2013). In a country with a history of ethnic tension, which escalated into armed conflict as recent as 2001, this issue is of fundamental importance.

However, the insufficient cultural representation is not the only problem that the PSB faces and for which it is in need of external support. The coverage of the local elections in 2013 clearly showed the extent to which the political influence undermined the political pluralism in the primetime news of the first channel of the Macedonian Television (UNESCO, 2013). Since this is only one of a series of existing concerns about political pressure on the media, the political reaction by the EU should be stronger and firmer. Nevertheless, EU policies regarding PSB in the former Yugoslav Republic of Macedonia have focused on more technical issues rather than addressing this problem. A major program in the area has been the cooperation with EBU. It provides the main instrument for MRTV (Macedonian Radio and Television) in its capacity building, mainly through assistance on digital archives and other activities related to technical modernisation (Dimitrijevska-Markoski et al., 2013). The other problems of the PSB that would require external assistance relate to the underdeveloped professional capacity and to the lack of guarantees against political influence. These issues also require long-term involvement and a coordinated effort.

3. Media market

The improvements in the legal framework regarding the media and its alignment with European standards were assessed in detail by the Progress Report 2013. However, the report also underlines that several stakeholders continue to raise concerns over possible breaches of the applicability of the rules and their actual use in a way that constrains rather than promotes media freedom. According to the Progress Report, the lack of balanced coverage during electoral campaigns (not only in PSB, but also in private media) is of significant concern, mainly as a result of three factors: first, lack of an effective framework guaranteeing political pluralism (IHS, 2014); second, overwhelming media dependence on public advertising, which also provides a context for political dependence (PACE Parliamentary Assembly of the Council of Europe, 2013) and (related to the above) third, state aid being reportedly directed at pro-government media outlets (SEEMO, 2014). In the context of a small and weak media and advertising market, the question of public funds and their distribution becomes crucial in relation to media viability. At least some of these funds originate from a variety of EU programs - some related to the media, but mostly related to visibility campaigns. In cases where EU funds are distributed to the media as aid or advertising budgets via the government, there is a risk that the financial resources provided by the external donors are used for further political interference and influence over the media. Therefore, in this context external institutions, including EU institutions, should pay greater attention to the rules and procedures for the distribution of such funds, as well as to the overall viability and sustainability of the media markets and their financing.

4. Status of Journalists

The European Union played a very important role during the recent political crisis in the country. In December 2012²², in the context of political tensions that arose in Parliament, opposition MPs were

²² This crisis ceased what is known as the 'Media Dialogue', a process of negotiations with the Government on the key media issues in the country, that the Association of Journalists had started since the adoption of the so-called Action Plan from Mavrovo. The Action Plan focuses on most priority problems identified in the media sector: inconsistent media policy and insufficient implementation of the media laws; serious lack of quality in journalism; ethical and professional standard; and the

dragged out of the Plenary Chamber by security guards after protesting against the adoption of the Budget. Journalists were expelled from the gallery where they were following the debate and were stopped from witnessing the forcible removal of the opposition MPs from the conference hall. The main media organisations reacted with a joint statement (Association of Journalists of Macedonia et al, 2012) condemning the act as a brutal breach of journalists' right to report on issues of public interest and of Article 16 of the Constitution, which guarantees freedom of expression and of the media²³.

The March 2013 EU-brokered agreement, sponsored by Commissioner Füle, European Parliament Rapporteur and S&D Member Richard Howitt and former European Parliament President Jerzy Buzek with Prime Minister Nikola Gruevski, SDSM Leader Branko Crvenkovski and DUI Leader Ali Ahmeti, sought to establish a constructive dialogue between the Association of Journalists and the government (European Commission, 2013a; European Parliament, 2014). With respect to legislative developments, "defamation was decriminalized and the Broadcasting Council moved to enforce conflict-of-interest laws designed to prevent political interests from controlling the media" (Dimishkovska, 2013). The intervention related to the EU-brokered agreement has had a positive impact, and was highly necessary as an emergency measure in a moment of high political tension. The very fact that such an emergency intervention was required demonstrates the need for a profound and systemic approach to media freedom challenges in the country, which must address issues such as political culture as well as the professional culture of journalists themselves.

4.1.3 Montenegro

1. Media freedom and legal framework

Of the Western Balkan countries, Montenegro is the closest to EU accession. As such, it may be taken as an illustration of the extent to which EU goals on media policy have been accomplished or not, what methods were used and what shortcomings such policy may nonetheless entail. Media freedom is at the core of the accession process of the country: one of the seven key conditions for Montenegro obtaining candidacy status is the enhancement of media freedom (European Commission, 2010).

Montenegro is currently the only enlargement country that opened chapter 23. Its action plan for this chapter contains specific measures for designing an effective framework for the protection of freedom of the media, the improvement of the status of journalists and the safeguarding of both the independence of the audio-visual regulator and that of the public broadcaster. As negotiations within this chapter were opened on 18 December 2013, a comprehensive list of the EU's interim benchmarks was also published, indicating specific results that are expected from Montenegro over a two-year time period. The expected results include: adopting a "zero-tolerance policy with respect to threats and attacks against journalists, prioritising criminal investigations should such cases occur", and establishing a "Commission to monitor the actions of competent authorities in the investigation of both old and recent cases of threats and violence against journalists, including one murder case" (Conference on Accession to the European Union -

lack of institutional autonomy and editorial independence of the public broadcasting. Most of the issues in the Action plan were incorporated in the negotiation process that the AJM started with the Government in order to improve the situation in the media sector. The willingness and support by the media community in the debate about the key problems and in the development and adoption of the Action Plan was crucial for its content. It manifested the positive will and strength within the journalistic community to find solutions and new ways for getting out of the long-lasting professional crisis. However, the Action Plan and Media Dialogue was just a beginning of this process.

²³ In June 2013, a controversial ruling rendered by the Skopje criminal court triggered reactions. The Court ordered the detained journalist Tomislav Kezarovski to spend another 30 days in detention in spite of journalists' associations string reactions. The arrest of the *Nova Makedonija* journalist was related to an article he wrote in 2008 for *Reporter 92* magazine. That article revealed the identity of a witness in an unresolved murder case. Later on, the witness changed his testimony, claiming that the previous testimony was made under threats from the police. The journalist refused to reveal the identity of his source even after a judge has reportedly demanded him to do so. See Sinisa Jakov Marusic, Macedonian Court Lengthens Detention for Journalist, published on the Balkan Insight in 27/06/2013, Available at: <http://balkanstory.wordpress.com/>

Montenegro-, 2013). Montenegro's initial track record shows progress in the investigation, effective prosecution and deterrent sanctions for perpetrators in these cases. The EU also expects Montenegro to fulfil its promise of amending the Law on electronic media by the end of 2015, with the aim of increasing the independence of the audio-visual regulator.

With regard to Montenegro, it is crucial that the EU to persist with its new approach and use interim benchmarks and the general framework of the Copenhagen political criteria to exert pressure on competent authorities to ensure that media freedom is not only guaranteed by the relevant legislation, but also protected in practice. The fact that interim benchmarks for Chapter 23 can be modified and that the negotiations within this Chapter can also be postponed if Montenegro does not comply with these benchmarks are powerful tools at the disposal of the EU.

The EU has influenced the legal framework of the country in a direct way (in this respect, see the country profile in chapter 2 of this report) as the main laws relating to the media *acquis* have been implemented and the constitutional framework is consistent with fundamental standards on freedom of expression. IPA ensures funds for developing projects aimed either directly or indirectly at enhancing media freedom. For the period 2007-2013, Montenegro received 245 million Euro, out of more than 11 billion Euro of overall IPA funds available for this period. Most of the money allocated through IPA is aimed at increasing capacity and promoting reforms in beneficiary countries in areas such as the rule of law, justice and home affairs, public administration reform, fundamental rights and civil society development and dialogue, all of which are relevant for safeguarding media freedom according to the above mentioned renewed enlargement strategy. Accordingly, media pluralism and media freedom are not safeguarded solely through projects that directly refer to the media and information society. Projects that seek to increase the efficiency of the judiciary and of the police, as well as the overall protection of human rights are also of relevance for a more effective protection of journalists and freedom of expression²⁴.

The EU has been active in the country through a specific project aimed at raising awareness, among other issues, on media reforms, namely *Investigative Journalism and Public Debate on Reforms (Media Freedom, Minority Rights and Rule of Law)* (European Commission, 2008). This project is addressed one of the key areas of concern related to media freedom in the region.

2. Public service broadcasting

As in all countries covered by this report, the EU faces particular problems in facilitating the development of an effective and independent public service broadcasting in Montenegro, as part of its general policy to foster media pluralism and internal pluralism. The EU is dealing with shortcomings of the RTCG (see, in this regard the Country profile in chapter 2 in this report), funding, under IPA, a specific project aimed at capacity building and organizational support of the PBS broadcaster on Support to Transformation of Radio and Television of Montenegro Into a Public Broadcasting Service (European Commission, 2008), and Support to the Digitalisation of the Montenegrin Public Broadcasting²⁵. This project demonstrates the importance given to the transformation of the PSB and the recognition that the process has not yet reached the stage that the PSB fulfils efficiently all its vested functions and social responsibilities.

3. Media market

²⁴Implementation of projects, such as *Open Institutions*, aimed at increasing transparency and accountability of Parliament, government, and public administration, or such *Civil Society Development*, *Implementation of Personal Data Protection Strategy*, *Justice Reform*, *Strengthening the Capacities of Police Administration*, *Active Monitoring of Human Rights*, *Support the Implementation of the Anti Corruption Strategy and Action Plan*, are also of crucial importance for improvement of media freedom.

²⁵ <https://www.devex.com/projects/tenders/support-to-the-digitalisation-of-the-montenegrin-public-broadcasting-in-montenegro-supply-of-equipment/11104>

The 2003 media reform ensured the transformation of the electronic media market, i.e. the transition of state owned media outlets into an open media market. However, the transformation of the media owned by the state or local administration into public service broadcasters never succeeded, because of the lack of attractiveness for potential investors. This case is a clear example of how the prescriptive requirements of the EU cannot be fully implemented in practice due to contextual conditions, and therefore, the expected outcome of media freedom is difficult to achieve. In a market as small as the Montenegrin one, investment interest is naturally very low due to a very low expected investment return. The requirement for an open private market needs to be addressed in the broader context of media viability, also in order to avoid the risk of new media owners politically instrumentalising the media as there is no economic interest in running them. Another factor that needs to be taken into consideration by any media market policy and/or requirements is the particular combination of market conditions in Montenegro, namely a very small national market combined with a heavy exposure to same-language media imported from much bigger neighbouring markets, in particular those in Serbia and Croatia.

4. Status of Journalists

The status of Montenegrin journalists provides interesting elements for an assessment of the effectiveness of the policy on media freedom within the Enlargement strategy and the EU contribution as a political actor in the area to find solutions in cases of particular crisis. The conditions of journalists in the country largely explain the low ranking of Montenegro in the annual reports compiled by international organizations such as the Reporters Without Borders²⁶. The attacks on journalists recently described in detailed reports by the think tank Human Rights Action, paint a rather worrisome picture (Vukovic et al., 2013; Human Rights Action, 2014). The situation escalated in early 2014 after the torching of a vehicle belonging to the daily newspaper Vijesti. The European Commission, along with international organizations, has expressed its concern over this and other incidents that preceded it and has called upon the State authorities to initiate an investigation and prosecute the violators of media freedom in Montenegro (Marthoz, 2014). Following these events, a Commission was established in order to monitor the investigation of attacks on journalists (European Union, 2014). Unfortunately, neither the condemnation at European and international level, nor the establishment of the commission seem to have produced a deterrent effect. In March 2014, Lidija Jovanovic, a journalist from the opposition daily newspaper *Dan* was attacked. The Montenegrin police has since detained six men, suspected of being involved in the attack (Tomovic, 2014). However, it is clear that more profound and systemic measures need to be taken, in order to tackle this gruesome problem. Such violence against journalists also takes place in the context of a very polarized media discourse and inevitably contributes to the media and political polarization. The aggressive culture in the media/politics domain is also reflected in the recent case against Vanja Calovic, in response to which there has been widespread international response, including its condemnation by the EU (European Union, 2014).

The 'local ownership of media reforms' is crucial for the 'internalisation' of results and measures to be implemented during the accession negotiations. In that respect, the necessary EU pressure should focus primarily on enabling conditions for the efficient and de-politicised prosecution of assaults and threats against journalists, with the aim of raising awareness about the punishment and condemnation for these crimes. This is valid for Montenegro despite its advanced stage in EU negotiations, and maybe even more so for some of the other Western Balkan countries.

Such an approach would also address the problem, since frequent assaults on journalists, the lack of adequate prosecutions and investigations of these cases and the polarisation of the media community between pro-government and opposition media are amongst the most distinctive features of

²⁶Montenegro ranked at the 113th place out of 170 countries covered by the 2013 Press Freedom Index (Reporters Without Borders (2013)).

Montenegro's media landscape. It is also important for the EU to continue to prioritise judiciary reform and given its relevance for media reforms and to enable appropriate market conditions and fair competition, which would enable the media to strive for financial sustainability under equal conditions. Hence, although negotiations within Chapter 10, on Information Society and Media, and Chapter 23 on Judiciary and Fundamental Rights, are perhaps the most important for pursuing and monitoring reforms in the field, a wider and more effective policy framework and comprehensive for media reforms should also be pursued.

4.1.4 Serbia

1. Media freedom and legal framework

Serbia was granted candidate status by the European Council's decision of 1 March 2012. The Stabilisation and Association Agreement (SAA) came into force on 1 September 2013. On 28 June 2013, the European Council decided to open accession negotiations with Serbia. The first intergovernmental conference was held in January 2014 and the Council, acknowledging the progress by the country towards fulfilling the Copenhagen criteria, expects further commitment by Serbia in the area of media policy. The EU accession process remains the key driver for changes in Serbian media policy. Starting from the democratic changes following year 2000, the European Union became the most important player in the country. EU assistance took a variety of forms, including direct technical and financial assistance to media outlets. It resulted in a long term approach that enabled the development of modern legislation in compliance with EU standards, as recognised also by the 2013 Progress report (European Commission, 2013d). Nonetheless, in Serbia too, the evolution of the legal framework was not accompanied by profound changes in the social environment. As a result the media landscape in Serbia is still characterised by political parallelism and the EU *acquis* is only partially implemented.

As discussed in recent literature (Marko, 2013), the EU supported more than 80 projects in Serbia between 2000 and 2010 (investing a total of 17,7 million Eur0 in the country). The main support came in the form of assistance at policy level for the adoption of laws or strategic documents relating to media development and digitalisation. The main laws adopted as a consequence of EU accession policies include: the Broadcasting act, the Law on public information, the Law on free access to information of public importance and the Law on Advertising (Marko, 2014a). In 2010, the EU funded the project "Preparation of the Media Study for the National Media Strategy of the Ministry of Culture of Serbia". In 2011, as a result, the Minister of Culture developed a media strategy that sets out guidelines for the development of a public information system in the Republic of Serbia by 2016, with the main goal of further strengthening democracy. Currently the EU efforts in the area focus on the following draft laws: the Law on electronic media (drafted in 2013), the Law on Public Services (drafted in 2013) and the Law regulating access to public information (Gajin, 2014; Milivojevic, 2014). However, their alignment with the *acquis* is not very advanced, also because the opinions of stakeholders and experts were systematically neglected by the State authorities (Gajin, 2014; Milivojevic, 2014). This type of decision-making process, which has apparently been adopted in many other cases (Marko 2013), is likely to lead to one-dimensional laws and actions, undermining the establishment of a co-operative environment for the reforms. Currently, three main pieces of legislation are under consideration within the media strategy: Law on electronic media (drafted in 2013), Law on Public Services (drafted in 2013), Law regulating access to public information (Marko, 2014b). Experts report that the EU has generally been taking the lead by funding initiatives for structural and legal reform and that legal experts, both from the EU and OSCE, have been involved in the Working Groups working on these laws (Gajin, 2014; Milivojevic, 2014). However, the experience of previous accession waves, as well as the current one have demonstrated that major obstacles to media freedom are generally not to be found in the adoption of the laws, but in their implementation. Therefore, external donors should place more emphasis on the building capacity to implement the laws as a key priority, alongside monitoring their implementation.

The importance of the involvement of journalists and judges in the process of creating a free media sector is, again, strongly emphasised by local stakeholders, who underscore the importance of establishing solid democratic roots in institutions and society. Despite the widely acknowledged good quality of the legal framework, which adheres to the EU standards, the media “remains constrained by political pressures, pervasive corruption, a climate of impunity, regulatory setbacks, and economic difficulties” (Freedom House, 2012).

EU financing for media freedom and pluralism still retains its value and visibility through a number of programmes, such as the 2008 IPA project “Support for the media capacity in the area of EU Integration”²⁷ and the 2010 EU funded project “Preparation of the Media Study for the National Media Strategy of the Ministry of Culture of Serbia”.

2. Public service broadcasting

PBS in Serbia have been benefiting from the support of the EU for many years. According to a recent study, the EU granted around 20 million Euro in grants to Serbian media through the CARDS programme (now replaced by IPA) and the European Agency for Reconstruction “invested 18.5 million Euro in media support from 2000 to 2007” (Marko, 2014a). Around 9.64 million Euro was devoted to RTS, the Serbian public service broadcaster, mostly for technical and logistical support. In this sense, the initiatives supporting the public service media is conducted in partnership with European Broadcasting Union. However, these initiatives are more closely related to the professional and technical capacity of the public service broadcaster. External action by the EU to date has not in ensuring a viable and independent PSB. As noted, Serbian PBS, as is common in the Western Balkans, is influenced by politics (Marko, 2014a). In the summer of 2013, while opening the debate on many media topics in the framework of the “media strategy”, the Ministry of culture supported a draft law on public service broadcasting that was neither shared with the actors involved the media strategy itself, nor with civil society. Following the severe criticism he received, the Minister withdrew the proposal and formed a working group that prepared a new proposal, that is still pending (Matic et al., 2014). These event show “a lack of political consensus on the regulation of public service broadcasting” and contradictions related to the funding, a problem that affects the regulation of the PBS from its establishment (Matic et al., 2014).

3. Media Market

Media outlets in Serbia were directly financed by external donors during the 1990s’ when foreign countries considered it important to empower critical voices against the government (Marko, 2014a). This included a wide range of foreign donors, with US donors having a leading role among them. After the change in the Milosevic government, an important role in shaping the media market has been played by the EU, as it influences reforms in the media sector through the conditionalities on media laws and the standards of the enlargement policy. More recently (starting from 2008 according to Marko) the economic crisis has aggravated the problems of a media market that is dependent on external aid, while external donors have withdrawn (Marko, 2014a). The EU continues to intervene in the country with a structured strategy. With regard to financial support, the 2010 IPA project funded the “Assistance to the digital broadcasting switchover in Serbia”. However, further facilitation of the efforts to transform the media market is also needed, since to date the media strategy for Serbia has only partially been implemented and with significant delays compared to the original time-table (Marko, 2013, 2014a).

Media ownership transparency is a problem that is particularly important in Serbia, which should be initially tackled through a reform of media regulation (Matic et al., 2014). The Media Strategy should also address

²⁷ http://ec.europa.eu/enlargement/pdf/serbia/ipa/2008/4-media_eu_integration_en.pdf

this issue. Nonetheless, the process of drafting relevant strategy and regulations is still pending, although a draft law was expected by March 2013 (Matic et al., 2014).

4. Status of Journalists

In November 2013, a consortium led by EPTISA (Regional Office for South East Europe) was awarded the European Union funded project named "Strengthening Media Freedom" (1 073 800 EUR). The purpose of the project is to support the implementation of the Media Strategy and related Action plan and to increase professionalism of journalists and media professionals through the harmonisation of the legal framework and support for the rule of law and freedom of expression. This project provides support both to the Ministry in the framework of the Media Strategy and the professionalization of journalists²⁸.

4.2 Countries that are potential candidates for EU membership

4.2.1 Bosnia and Herzegovina

1. Media freedom and legal framework

BiH appears to show uneven levels of compliance with EU requirements, which is mainly to be attributed to the different approach of Republika Srpska that opposes efforts to centralise and coordinate the state and of the Federation that is generally in favour of such EU requirements (Noutcheva, 2012). This incoherence has slowed down the overall accession process of BiH and created a number of complications and difficulties in the implementation of external assistance programs. The High Representative often plays a role in overcoming impasses between the sides and thus, the HR is also a factor in resolving disagreements between the sides regarding the EU accession process (Noutcheva, 2012), which makes the accession process appear to be imposed by external authority. However, it should be noted that currently the role of national authorities is gradually increasing compared to the role of external institutions.

Regarding BiH, the implementation of media policy by the international community was left in local hands at the beginning of the 2000s' and since then it has reversed its positive trend (Hodzic, 2014). The strategy of the EU in the Western Balkans and the instruments and conditions created by the SAA currently constitute the main tools available to improve the situation in the media, following a post-conflict phase of deep involvement of donors in the country and policy actions by the HR (Jusic et al., 2013). The 2011-2013 Multi-annual Indicative Planning Document of the Instrument for Pre-Accession Assistance (European Commission) sets out the priorities of the European Union relating to assistance to BiH. Amongst other things, the document foresees assistance in sectors such as Justice and Home Affairs and Public Administration Reform, which are indirectly aimed at strengthening media freedom and pluralism issues from a structural perspective. The two main areas of EU involvement are: (1) strengthening the Communications Regulatory Agency, - since the government is ultimately in charge of approving the appointment of the CRA's director general and council members, political interference in the process is rather common (Freedom House, 2013b); and (2) strengthening the independence of the public service as well as capacity-building through projects of the European Broadcasting Union. Although these are crucial and necessary areas for media freedom and support, their impact is yet to be seen.

2. Public service broadcasting

With regard to the lack of independence of PSB, public broadcasters are under strong political pressure, often due to the appointment of politically 'suitable' people to managerial positions (Kurkowski, 2013). Moreover, the PSB system in BiH has been facing a structural problem, inherited from the previous administration, namely the difficulty in coordinating three different PSBs (see Thompson, 2013). Thus, in addition to its highly politicised management and its financial dependence, one of the main problems

²⁸ <http://www.eptisasee.com/strengthening-media-freedom/>

faced by public service broadcasting in BiH is institutional fragmentation: "Federation Television and Radio-Television of Republika Srpska, the largest public broadcasters in the country, tend to behave as rivals and are generally organized along ethnic lines" (Freedom House, 2013b). Moreover, little has been done to date to establish the fourth public service organization, which is intended to unify and improve the efficiency of the other three.

As in the other countries of the area, the EU supports Bosnia and Herzegovina PSB through its partnership with EBU. The project is directed at strengthening the public broadcasters that are active in the region. However, it is mainly focused on technical assistance and training of journalists and media professionals.

Media experts have underlined that many changes need to be introduced in the legal framework regulating PSBs, including amendments to the appointment procedure of their board members (Kurkowski, 2013). One example that emerged recently concerns legislation adopted in October 2013 in the Republic of Srpska that establishes a controversial appointment procedure for steer board members of the public broadcaster RTRS. In general, public broadcasters in Bosnia and Herzegovina are not supported by a legal framework, within which they may operate in order to fulfil their mission to provide balanced and varied programming, not subject to political interference.

The lack of coherence, consistency and collaboration between the entities makes it very difficult to guarantee a well-functioning public service system. Nevertheless, it should be noted that the systemic problems faced by the public service broadcasters are rooted in broader systemic problems faced by the state of BiH at a more general level and not only with respect to the media system. Therefore, any effort to significantly improve the conditions of the PSB and media freedom in general will be related to resolving the general governance challenges in the state, including fragmentation, lack of collaboration between the entities and even tensions. EU efforts to ensure better governance in BiH as a whole would increase the chances of the media system functioning more effectively and of the PSB fulfilling its normative obligations.

3. Media market

As already mentioned, the BiH media market is small and fragmented, not only due to economic reasons, but also because of ethnic fragmentation (Jusic et al., 2013). As in the other countries of the region, the media are dependent on state aid and state advertisement, which threatens their independence from political powers. Media ownership and funding transparency are issues of concern in the country. The EU should push therefore, for the adoption of two laws, which are missing in legal framework for media: the law on media transparency and the Law on advertising. The adoption of such legislation could significantly contribute to strengthening the transparency of the media, preventing conflicts of interest, political influence and the flow of money with unclear origin in the media and advertising industry in BiH.

4. Status of journalists

The EU has also undertaken a number of initiatives in cooperation with other international organizations to put pressure on the BiH authorities in cases of freedom of expression-related violations. For example, the EU Special Representative Peter Sorensen, sometimes in joint statements together with OSCE Representative on Freedom of the Media, has repeatedly issued statements calling for legal reforms to ensure media freedom in the country and to address the situation of threatened journalists (Mijatovic et al., 2012).. Corruption and political interference with the editorial policies of media outlets are concerns that have not been effectively addressed to date, which has meant that the pressure by the EU has played a limited role in preventing further violations. The EU should consider providing stronger support to those initiatives in the area of self-regulation of journalists that prove to be successful, such as the Press Council.

4.2.2 Kosovo

1. Media freedom and legal framework

Kosovo is in a special situation both because of its self-declared independence dates back only to 2008, and because its sovereignty status is only partially recognised (five out of the 28 EU Member States have not recognized Kosovo as a sovereign State: Spain, Greece, Romania, Cyprus and Slovakia). This peculiar situation explains why the Stabilisation and Association Process in Kosovo is markedly delayed when compared to all the other Western Balkan States.

EU action in the media sector has not been very visible to date. The main tool at its disposal, which the EU has regularly used thus far, is the elaboration and publication of annual reports to assess the progress that Kosovo has made toward accession to the EU. Ever since the early Progress reports of mid 2000s, the media freedom conditions and relevant policies in Kosovo have been evaluated as insufficient. Reasons for this include attacks on journalists, the lack of proper access to public documents, concerns over the regulation and funding of the public broadcaster, Radio Television of Kosovo (RTK) as well as the criminalization of libel (Qavdarbasha, 2012).

2. Media market and public service broadcasting

Many international organisations, including the European Union, are helping the country to create a free media landscape through a number of initiatives (Miftari, 2013). As already stressed in Chapter 2 of this report, these efforts have resulted in, the adoption of certain standards aimed at protecting media freedom, the establishment of a PSB and the setting up of the Independent Media Commission and the Press Council. However, despite the above initiatives, strong financial dependence and political parallelism of the media are pervasive. In the case of Kosovo, there is a greater need for technical assistance in the establishment of PSB, as the newly established country did not have strong country bound state broadcasters, which could be directly transformed into public ones. However, this does not diminish the necessity to develop a professional culture oriented towards the public good. The private media market faces the difficulties typical of a small and underdeveloped national market with political dependencies. More consistent and targeted efforts by the EU institutions are needed in order to address the problems of economic development and market transparency. However, it should be noted that these efforts must go beyond the media market itself in order to create and guarantee the conditions for a competitive and pluralistic market structure. In order to improve the situation, a more coherent approach to assistance needs to be adopted by the different international donors, in order to ensure greater coordination of the efforts to design an effective legal framework and set up high standards for the protection of the journalistic profession.

The EU supports PBS through the EBU partnership also in Kosovo. This program is focused, as in other countries in the region, on technical assistance of the media and training of journalists and media professionals. EBU also takes a stance on different issues related to the PSB in Kosovo, including by raising concerns about political pressure over the PSB in the country (European Broadcasting Union, 2013).

3. Status of journalists

In June 2012, a draft law that would have undermined media freedom was proposed. More specifically, the law intended to remove Article 38 from the Criminal Code as a result of which journalists would no longer have the right to protect their information sources, "leaving the way open for judges, prosecutors and other authorities to demand disclosure at will" (European Broadcasting Union, 2012). Fortunately, the law did not pass. On the contrary, following pressure from both international organizations and think tanks (European Broadcasting Union, 2012; BIRN Balkan Investigative Reporting Network, 2013), Kosovo adopted a sector-specific law aimed at protecting journalists and their sources (Republic of Kosovo. Assembly, 2013). The law may be seen as a step forward towards the promotion of investigative journalism. Yet, the adoption of the law does not mean that journalistic freedom is no longer a concern in Kosovo. On the contrary, according to the Nations in Transition (NIT) reports elaborated by Freedom House, journalists in Kosovo face pressure either in physical, financial or editorial terms, which in turn results in self-censorship. These issues are

aggravated by the fact that media market is small, underdeveloped and not sustainable, as well as the public broadcaster does not enjoy full independence (Qavdarbasha, 2012).

The EU has supported a number of initiatives seeking to strengthen media freedom in Kosovo. One of the most important has been the European Instrument for Democracy and Human Rights. Moreover, the EU Office in Kosovo has been supporting initiatives, which aim at the promotion of independent media and at preserving freedom of expression: examples of such initiatives include the TV shows 'Life in Kosovo' (Jeta në Kosovë) and 'Komunikimi'. Another project concerns social media implementation. In the context of this project, the EU drafted a practical guide which, while written specifically for Kosovo's Ministry of European Integration, may also assist other Kosovo Ministries working on the EU integration process to increasingly deliver effective social media best practice. It also seeks to improve co-ordination with communications colleagues at the Ministry of European Integration (Ministry of European Integration, Kosovo, 2014).

IPA funding has also been provided for the organisation of training seminars for television, radio and print journalists *inter alia* seeking to improve the coverage of EU-relevant topics, both at the local and national levels. Journalists have reportedly been willing to attend such seminars.

5. EU SYNERGIES WITH THE COUNCIL OF EUROPE, THE OSCE, THE REGIONAL COOPERATION COUNCIL

The EU is not the only inter-governmental organisation that operates in the Western Balkan region. EU policies in the area must be analysed in the context of the long-term involvement of other European institutions such as the CoE and the OSCE, that have been playing an important role in developing media freedom in the region and providing political and financial support for decades (Rhodes, 2007). The media assistance provided by the OSCE and CoE in the region developed mostly in a post-conflict framework, aiming at sharing common standards of fundamental rights among Member States. In this respect, the intervention by the OSCE and the CoE in the area has provided continuity and has proven to be more systematic than the support coming from diverse external donors besides the EU, such as US donors or unilateral donations from different EU Member States. Moreover, the OSCE and the CoE, by virtue of the leverage of their institutional position, monitor the effective compliance with existing standards on freedom of the media and have the authority to demand compliance by the state with these standards.

The OSCE and the CoE, have also contributed significantly by supporting the liberalisation of the media sector, the reform of the legal framework, the creation of PSB from the ashes of state televisions, the establishment of regulatory bodies, training for journalists and for judges on freedom of expression and the media, and by providing support for media outlets and the self-regulation of journalists.

The CoE, in particular, has been very influential in guaranteeing fundamental rights and freedoms, setting standards for freedom of expression and freedom of the media through recommendations and declarations by the Committee of Ministers²⁹, the remarkable case-law of the European Court of Human Rights on Article 10 of the European Convention for Human Rights and Fundamental Freedoms, the work of the Parliamentary Assembly³⁰, of the Steering Committee on Media and Information Society (CMDSI)³¹ which oversees the Council of Europe's work in the field of media³² and its fieldwork activities, including training and assisting local experts in writing new regulations on the media (see the activities of the Media and

²⁹ http://www.coe.int/t/dghl/cooperation/media/Conventions_CM_PA/Conv_CM_texts_PA_texts_en.asp

³⁰ http://www.coe.int/t/dghl/standardsetting/media/Doc/PACE_en.asp

³¹ http://www.coe.int/t/dghl/standardsetting/media/CDMSI/default_en.asp

³² Consider also the Committee of experts protection of journalism and safety of journalists (MSI-JO) and the Committee of experts on cross-border flow of Internet traffic and Internet freedom (MSI-INT)

Information Society Division of the CoE, which has always been very active in developing and diffusing European media freedom and pluralism standards).

The OSCE has been, and still is, visible in promoting media freedom and pluralism through country missions, through a regular annual conference on media freedom organised by the OSCE for the last 3 years, as well as the work, statements and interventions by the Representative for Freedom of the Media³³. The OSCE develops media programs, mainly aimed at supporting local organisations in drafting new legislation in accordance with shared European standards, at improving the capacities of media institutions and supporting the training of journalists. The Representative on Freedom of the Media is particularly active in the area, fostering media freedom and pluralism on a political level and through political instruments, i.e., providing early warning on violations of freedom of expression and promoting compliance with OSCE principles and commitments regarding freedom of expression and free media (OSCE Organization for Security and Co-operation in Europe, 2014). Furthermore, the OSCE has been very active over the last years in the area of regulation of online media across Europe, as well as in the Western Balkan region, promoting cross-border regional co-operation and strengthening regional or countries' capacities for the protection of freedom of expression.

The political role of the CoE and the OSCE is still relevant and pivotal in the region, despite having been shadowed during recent years by the rising importance of the EU, because of the high benefits the EU can offer to aspiring countries by rewarding their progress with pre-accession assistance, and, in the final instance, with accession itself.

The CoE and OSCE have played an essential part in defining European standards for media freedom and media pluralism. The EU enlargement process in the area has benefited indirectly from this, as the principles enshrined in the CoE conventions, as well as the CoE recommendations and OSCE standards, are frequently backed by the EU, and are thereby also becoming conditions that must be enforced in the countries of the region. Many requests by the EU in the accession process are defined according to standards developed by the CoE and OSCE, ranging from defamation and libel, to media ownership and media ownership transparency, from media pluralism to fair media coverage for electoral campaigns, only to mention a few. Therefore, the role of OSCE and the CoE on one hand, and the EU on the other, are complementary.

The importance of the CoE and OSCE standards was recently (May 2014) recognized by the EU Council itself that stated that the EU Human Rights Guidelines on Freedom of Expression Online and Offline should be used by EU "officials and staff of the EU Institutions and EU Member States for their work in third countries and in multilateral fora as well as in contacts with international organisations, civil society and other stakeholders" (Council of the European Union. Foreign Affairs, 2014), thereby formally adopting the standards developed by international institutions and by the CoE and OSCE in particular. As already mentioned in Chapter 3 of this report, the EU Treaties create a strict link between the EU institutions, the CoE in particular and other international institutions dealing with freedom of expression. These interconnections form the basis of media pluralism and freedom standards in Europe and have the potential to define the very core and principles for effective interventions in the media sector throughout Europe (CMPF, 2013). From this perspective, the provision of the Enlargement strategy 2013-2014 (European Commission, 2012c), that aims at ensuring freedom of expression and of the media as a priority through chapter 23 (Judiciary and Fundamental Rights) and chapter 10 (Information Society and Media), can be seen as consistent with the aim of developing the diffusion of common European principles with

³³ In this regard, see, for instance, the Representative on Freedom of the Media Dunja Mijatovic's Regular Report to the Permanent Council for the period from 28 November 2013 through 18 June 2014
<http://www.osce.org/fom/119957?download=true>, 19 June 2014

regard to media freedom, as guaranteed by the *acquis* - including the Charter - as interpreted according to CoE and OSCE standards.

At present, the EU's financial impact and regulatory influence in the Western Balkans is generally perceived to be stronger than that of the CoE and OSCE, because of the accession process in the area. The CoE provided more intensive assistance in the region of the Western Balkans in the period between 2000 and 2005 (Nikolchev, 1997). This results in the EU also having greater political weight in the region, to define priorities and policies in general and in the media sector specifically. However, significant political impact and power to influence change towards media freedom and pluralism could be achieved more easily through greater collaboration among the intra-governmental institutions, namely EU institutions together with OSCE and CoE. Moreover, such collaboration is too often a result of ad-hoc or at times personal initiatives, which cannot achieve an optimum level of sustainable outcomes of the implemented policies (Nikolchev, 1997). A more comprehensive coordination and long-term collaboration need to be established.

Notwithstanding this, it must be stressed, on the one hand, that the CoE, often jointly with OSCE, is still remarkably functional in very important activities, such as monitoring media during elections, and that there is still interest from the international community in following and supporting the development of the media landscape in the region through the actions of the CoE. The Institution has, for instance, recently been granted 1.000.000 Euros from Norway to support media freedom in the area³⁴ (Council of Europe. Office in Belgrade, 2013). On the other hand, OSCE missions continue to support media programs in the Western Balkans, even if they are being downsized (Petkovic, 2013). The activities by the CoE and OSCE on freedom of expression and of the media in the region are very relevant and are focused on freedom of the media. Stakeholders interviewed working in the area stress the need for the EU to better cooperate with the other inter-governmental institutions³⁵, as it is important for the countries of the region to rely on structured, common and consistent regulatory and financial strategies in the media sector, that, so far, are missing. A good example of cooperation amongst the three institutions can be found in BiH, with regard to the joint action of CoE, OSCE and EU on the appointment of the Board of Directors of RTVFBiH.

The accession process could benefit also from a stronger connection and much more intensified cooperation between the countries, on EU policy on media pluralism and media freedom. The Communication on the Enlargement Strategy and Main Challenges 2013-2014 states that the Commission is working closely with the relevant international and regional organisations on fundamental rights issues, in particular the CoE and the OSCE, and "proposes that candidate countries participate as observers in the EU's Fundamental Rights Agency, in view of supporting their efforts to ensure full respect of fundamental rights". As the Fundamental Rights Agency (FRA) does not have a specific competence on media freedom, a greater involvement of the Western Balkan countries, and of OSCE and CoE in the EU media pluralism and media freedom policy could be suggested, for instance, through participation by NRAs in the newly established ERGA, through participation of the Western Balkan countries in the programs on media pluralism that the European Parliament and the European Commission are running. Moreover, an effective and shared system for monitoring media freedom could be established, also in light of what the EU is doing with the 2009 MPM. With regard to increased co-operation and synergy, as mentioned above, in the 2013-2014 strategy the Commission has committed itself to "develop a long term vision of EU financial assistance on freedom of expression, also working together with key partners (e.g., Council of Europe, OSCE, OECD)" using the IPA II instrument. Such synergy and long-term strategy will provide a clear sign of commitment by the EU and will foster more sustained and efficient capacity building as well as high standards of implementation the legal and policy framework in the area of media freedom.

³⁴ http://www.coe.int/t/dghl/cooperation/media/projects/project_JP_SEE_en.asp

³⁵ http://ec.europa.eu/enlargement/pdf/speak_up/speak_up_conference_conclusions.pdf

In the realm of administrative cooperation, the recent “New agreement between the Commission and the Council of Europe on human rights, democracy and rule of law” is central to defining EU and CoE common working methods to achieve common policy goals (European Commission, 2014).

Another influential intergovernmental institution in the area is the Regional Cooperation Council (RCC), as the successor of the Stability Pact for South Eastern Europe. The RCC promotes and enhances the regional cooperation and proactive involvement of the South East Europe (SEE) countries. It also supports those countries that aspire to the European and Euro-Atlantic integration. “Although this sector was not regionally identified as one of the priority areas of the RCC Secretariat’s work,” the RCC Annual Report 2011-2012 states that media development “has emerged as one of paramount regional importance, being also noted in the European Commission Enlargement Strategy and Main Challenges 2011-2012” (RCC Regional Cooperation Council, 2012). In this regard, the RCC has contributed to the diffusion of European standards in the area in a very effective way through the establishment of the Academy on Media Law in South East Europe in 2012 and 2013 (Regional Cooperation Council, 2012, 2013a and 2013b) and supporting the Monroe E. Price International Oxford Media Law Moot Court Competition in Belgrade (2013) (RCC Regional Cooperation Council, 2013). Its activities relating to the improvement of public media services (the European Association of Public Service Media fostered in co-operation with EBU) also deserve to be mentioned as very relevant.

The activities of the Media Law Academy are particularly useful and can greatly contribute to the exchange of experiences in the region on the common challenges that all the countries are facing with regard to media freedoms, and in sharing knowledge, common European standards and good practices with a view to finding solutions and new directions for resolving the most urgent problems in the media sector.

Aside from these European inter-governmental bodies, it must be stressed that UNESCO is present in the region (through European Commission grants) by means of a project on promoting the development of journalists’ professional self-regulatory mechanism, and supporting media freedom in the Balkans and Turkey. Single states are also working to promote their own media strategies: the US government, for instance, has been supporting the media in the region since the 1990s. The Balkans have provided a crossroad where different principles and media strategies have come face to face with one another: the US one, heavily market and industry oriented has met with the European one, which is more focused on the role of public service broadcasting (Petkovic, 2013). IREX is also very influential in the region through its Media Sustainability Index (MSI) that provides analyses of the conditions for independent media. Amongst other influential bodies, the Open Society Foundation has had a steady presence in the area³⁶.

5.1 Countries that are candidates for EU membership

5.1.1 Albania

The OSCE, the CoE and the EU are also active in Albania, where they originally collaborated in providing legal assistance in the reform that was at the basis of the dual system of broadcasting. Moreover, the CoE has focused on violations of media freedoms in Albania in the context of the Parliamentary Assembly’s monitoring procedure; it has played a positive role in putting pressure on changing the legislation on defamation; as well as having assisted in providing training for journalists and legal support on defamation issues.

³⁶ For a more comprehensive analysis of the external interventions on media policies in the areas (until 2007), see Rhodes A (2007) and the work in progress of the project *Development of Functional Media Institutions in Western Balkans and the working papers Working Paper Series on Media Assistance in the Western Balkans*, <http://analitika.ba/en/news/working-paper-series-media-assistance-western-balkans>

In 2007, Albania signed an Action Plan for media legal reform with the EU and the CoE (Londo, 2013c). This cooperation has focused especially on drafting the Strategy to Digital Switchover and adopting the new law on audio-visual media. The OSCE has also played a role in this legal reform by providing expertise (Londo, 2013). The EU, CoE and OSCE have also cooperated for the establishment of Albanian PSB.

The OSCE monitored the 2009 election campaign, which marked "a low point for the Albanian media", due to their partiality and the main coverage coming from broadcasting information controlled by politicians themselves (OSCE 2013f). The OSCE's Representative on Freedom of the Media has taken important steps to foster an intensive and efficient dialogue with the Albanian authorities. One of the most significant improvements took place in March 2012, when amendments to the Criminal and Civil Codes that removed prison sentences for libel and defamation were adopted and the special protection for public officials was repealed. The OSCE has not been very engaged in cases of harassment and assaults on the media in the course of Albanian elections.

5.1.2 The former Yugoslav Republic of Macedonia

As already highlighted in this report, the CoE has been active for many years in the field of freedom of expression and media freedoms in the country. It provided expertise and support for the development of the 2005 Broadcasting Law. It coordinated the organisation of several important regional conferences and invited media professionals from the country to relevant international conferences that focused on important topics relating to media and freedom of expression. The CoE accepted the invitation of the government to conduct an expert review of the new draft law on media and supported the organisation of a conference by the Association of Journalists and the Macedonian Institute for Media on the new legislation.

The OSCE mission has also played an important role in supporting activities aimed at strengthening freedom of expression and media freedoms. It cooperated with and supported the activities of the Broadcasting Council in the development of the first Strategy for the Development of Broadcasting (2007 – 2012) and also worked towards the transformation of the public broadcasting service. It has recently supported public debates relating to the respect for ethical standards for free, balanced and non-biased media coverage of the local elections in 2013, organised by the School of Journalism and Public Relations. The Office of the OSCE's Special Representative on Freedom of Expression and Media has also been very active in the last few years, both in direct discussions with the Prime Minister and other governmental officials, and with issuing public statements calling for respect for the basic international and European standards on freedom of expression. She was particularly active during the drafting of the Law on Media and Audio-Visual Media Services, commissioning expert reports on the various stages of the legislative procedure.

The OSCE has held a firm presence in the country for the past several years. Previously, the European Commission and the CoE's activities were more synchronised, especially with regard to support for the process of drafting the 2005 Broadcasting Law (the draft-Law was jointly reviewed by the European Commission and CoE experts in 2004 and 2005). However, although the OSCE is currently more present, through its critical voice (e.g. on the new draft of the media law) and a number of initiatives (several regional conferences have been organised in recent years), its impact on the governmental institutions in the country remains quite low. This is most likely due to the lack of political will on the part of the local government to follow external inputs.

5.1.3 Montenegro

The CoE has had a strong impact on Montenegro through its recommendations. The fact that the recommendations are frequently quoted and backed by the EU gives them significant force and, as such, they have become standard parameters to be enforced in the country. In that respect, the recommendations of the CoE's Venice Commission, which advised on amendments to the 2007 Constitution, became one of the main forces behind the move towards de-politicising the country's judiciary and significantly contributed to progress in the accession negotiations.

The OSCE has also been vocal and highly visible in promoting media freedom and pluralism, providing indispensable input, in particular through its drafting assistance. Its Mission to Montenegro has a special media program, which provides legal assistance in the media sector. One particular case of support for the enhancement of legal act includes the drafting of the Law on Public Broadcasting Services of Montenegro and the Electronic Media Law. Additionally, OSCE supported the drafting and implementation of the Law on Free Access to Information. It has also been working to improve the capacity of media institutions and monitor the media situation in the country. Additionally, the OSCE Mission to Montenegro has been active in the academic development of journalism studies at the University of Montenegro, which is hoped to have a trickle-down effect in the profession. Finally, the OSCE has also improved the situation in Montenegro by supporting the professional training of journalists.

The OSCE and CoE observed the Montenegrin presidential and parliamentary elections, held in April 2013 and October 2012 respectively. Both organisations issued joint preliminary conclusions, which contained an assessment of the media environment. In several reports regarding the compliance of Montenegro with the EU's conditions, Montenegro is usually asked to follow CoE recommendations.

5.1.4 Serbia

The CoE has been very influential in Serbia, both as a direct actor in the development of regulatory strategies and donors and, indirectly, as the main point of reference with regard to fundamental rights standards. In line with its continuous effort to improve media legislation in Serbia, the CoE carried out the project 'Support for Freedom of Expression and Information in Serbia', financed by the European Agency for Reconstruction. CoE standards are at the core of the development of media legislation in the country: they were, for instance, the reference point in setting up the RBA. OSCE and CoE experts assisted a local working group in drafting the Broadcasting Act 2002 as well as, cooperating in the establishment of the Serbian PSB, in the framework of action by the EU.

The media department of the OSCE mission in Serbia cooperates with the Ministry of Culture and other relevant authorities aiming at strengthening the media sector and providing legal support in the preparation and implementation of legal acts, aligning them to international and European standards, documents cases where the rights of the media have been violated and supports the professional development of the media (OSCE Mission to Serbia, 2012).

The OSCE's Representative on Freedom of the Media is very active in advocating for legal reform, for example by ensuring the safety of journalists and independent reporting, a politically and financially independent broadcasting regulator, and a public service broadcaster. It also seeks to "ensure the complete withdrawal of the state from the media market, and to foster an environment conducive to free media and the safety of journalists" (OSCE Organization for Security and Co-operation in Europe et al., 2012). According to the opinion of local experts, even more synergy and co-ordination from relevant international players is recommended. Synergy between the policies and instruments of the EU, the CoE and the OSCE is crucial for the reforms in the sector. For instance, collaboration amongst the organisations played a crucial role in the establishment of the functional regulatory body. Indeed, the CoE, OSCE and EU currently do have a good level of cooperation in the country.

5.2 Countries that are potential candidates for EU membership

5.2.1 Bosnia and Herzegovina

The presence of international organisations was very intensive in the first years after the wars, but has significantly decreased now. Most laws were drafted with the help of international organisations, but in the recent years, their application has been left to local political and institutional actors and even their monitoring has not been substantial. Local experts point to the decreased indexes of media freedom as an indication of the effect of this withdrawal.

The withdrawal has also resulted in a lack of continuity of EU and international policy, which has a negative effect as local actors cannot count on the support of external actors.

The CoE and the OSCE have had a very positive role in the process of improvement in media pluralism in BiH. Their activities have focused on: the improvement of media legislation, the inclusion of European standards into media laws, as well as on developing journalists' knowledge and skills related to the implementation of ethical rules into daily base practice.

The CoE has realised a number of projects in BiH and the activities that were directed towards the application of Article 10 of the European Convention on Human Rights. It has also led to improvements in the internal capacity of BiH media organisations and actors in the following areas: self-regulation, implementation of the law on protection against defamation, combating of hate speech in the public sphere and the media, as well as advancing non-institutional instruments for the education of journalists and journalism students in BiH.

The OSCE (through the Office of BiH and the Office for the Freedom of media, Vienna) is very active in the field of protection of the right to freedom of expression. Violations in BiH take place on 'a daily basis' and in this respect the OSCE has very quickly and effectively responded to attacks on journalists, political pressures on the media, and the influence of local authorities on the editorial policy of the media. The public reactions of the OSCE in relation to cases of threats against journalists in BiH or violations of freedom of expression are of great importance as an effective tool for the promotion of freedom of expression and journalists' rights to free and safe work in daily practice.

The OSCE, and in particular the Media Freedom Representative, expressed serious concerns about the situation in BiH. In the last months the Representative expressed her concern about threats against journalists (OSCE, 2013b) and about the amendments to the access to information law (OSCE, 2013c). In September, she affirmed that the criminal prosecution against journalists in BiH was endangering the right to freedom of expression (OSCE 2013d). In October 2013, the Representative stated that the draft on electronic communications law could affect the independence of communications regulators and recalled that "Independent regulators play a key role in ensuring media pluralism and media freedom in any country" (OSCE 2013e).

In the last two years (2012 -13) the cooperation between the EU, the OSCE and the CoE in the field of media freedom and the improvement of the legal framework for the media in BiH has been clear. Acting together, the three organisations reacted to the allegedly illegal appointment of the Board of Directors of public broadcasting in the Federation of BiH (RTVFBiH), to the conduct of members of the Council of the Communications Regulatory Agency, as well as demanding the establishment of a single corporation for PSBs. During this period, the three organisations have also issued several joint press statements concerning threats to journalists, or violations of freedom of expression, which were very positively received in the media community in BiH.

5.2.2 Kosovo

OSCE has played a very significant role in Kosovo: initially they worked without coordination with the strategies of UNMIK and later on in co-operation with it (Miftari, 2013). In general, the OSCE Mission, among many other activities in the media sector, supports the development of free and independent media in the country and has worked as the right arm of UNMIK that entrusted to OSCE the democratization and institution building in the country (Miftari, 2013). In this framework, OSCE supported Kosovo in establishing the “Temporary Media Commissioner (TMC) – the predecessor to the Independent Media Commission (IMC)... and the Press Council of Kosovo (PCK)” (Miftari, 2013). Kosovo’s public broadcaster, Radio Television of Kosovo (RTK), was established in 1999 with considerable OSCE support as part of this framework as well. In order to ensure that RTK is politically, financially and editorially independent and serves all communities in Kosovo, the Mission also supports the Kosovo Assembly in reviewing the legal framework regulating the broadcaster’s operations (OSCE Mission in Kosovo, 2012). The presence of these institutions makes it possible for journalists and the media community can raise awareness of specific violations or to advocate for laws despite the weakness of the national institutions. Progress in this way has occurred with the criminal law, the law on public broadcasters, the law on the protection of journalistic sources, etc.

The Mission is active in promoting investigative journalism and self-regulation for journalists through Kosovo’s Press Council and, via the Independent Media Commission, supports the regulation of broadcast media. In Kosovo, institutions representing other countries, such as the Embassies of different European countries and the US embassy, play an important role as well. Due to the transitional period in Kosovo, public officials still act faster following ‘pressure’ from the international community, rather than from civil society. As such, the role of these Embassies in protecting journalists and addressing their issues is vital.

The CoE, with the voluntary contribution of Norway, is currently working in Kosovo (and in the other SEE countries), through an 18 months project on the promotion of freedom of expression and information and freedom of the media in South-East Europe. The overall objective of the project is to develop legal and institutional guarantees for freedom of expression, higher quality journalism and a pluralistic media landscape in SEE, in line with CoE standards.

6. RECOMMENDATIONS FOR MEDIA FREEDOM AND PLURALISM IN THE WESTERN BALKAN COUNTRIES

Any shortcomings in the area of media freedom and media pluralism in the Western Balkans jeopardise the overall level of democratic standards in the countries of the region, as well as the sustainability of the progress already achieved in the areas of human rights and rule of law. The problems facing the media and journalism involve various aspects of the social, political, legal and economic functioning of states, and efforts to improve the level of media freedom and pluralism need to take into account all of these aspects. Neglecting any of these areas creates loopholes in the overall efforts and strategies, which could undermine the sustainability of media freedom and the overall protection of freedom of speech, access to information and public representation of the opinions of the different groups in a society. Moreover, the experience of the EU enlargement process so far demonstrates that, despite the very rigorous accession evaluation process and significant assistance in building an up-to-date and up to the task legal framework, there is still a risk of deterioration in media freedom standards once a country becomes a Member State and when the accession mechanisms are not in place. Therefore, further efforts should be made to evaluate the implementation of the legal framework, and especially its guarantees for sustainability in all countries on the path to EU accession. Consequently, the current approach of the EU to put the fundamentals first is a step in the right direction.

Additionally, it needs to be emphasised that media freedom and pluralism and the democratic social and political functioning of a state are mutually dependent. Just as any improvement in the area of media freedom would therefore contribute to democratic development, media freedom and pluralism also require the “enabling environment” of functioning democratic institutions and a liberal political system. All the recommendations listed below should be followed, while giving due consideration to the overall political system, but also the overall economic situation and business culture, as well as the educational and cultural sphere. The media cannot be seen, evaluated or reformed in isolation from their environment, which significantly influences policies and practices in their field of action. A profound improvement of the level of media freedom and media pluralism in the Western Balkan countries, will require taking action to strengthen and assist the capacity building of independent state bodies such as the court of audit, anti-corruption bodies, information commissioners, ombudsmen and others (if relevant in the particular states). Concrete actions may also include programs aimed at increasing the competencies of parliamentarians or state officials who are involved in the media policy field.

1. Monitoring of media freedom status, legal framework implementation, context and risks

Recommendation: There should be independent regular, comprehensive and in-depth monitoring of the application of the legal framework and self-regulation norms, concerning media freedom and pluralism.

Throughout the countries in the region, the implementation of the legal framework is outlined as being a much more significant problem than the rather well developed media laws and other related laws, including those that concern freedom of expression and access to information. It is thus highly recommended that an **independent regular, comprehensive and in-depth monitoring** of the application of the legal framework be introduced. Such a monitor needs to reflect the specificity of regulating the media sector, i.e., that regulation is often complemented by key elements of self-regulation. Monitoring the implementation of the legal framework needs to take place in parallel and be combined with monitoring the mechanisms of self-regulation and the observation of journalistic professional standards and Codes of Ethics. Detailed monitoring has a strong potential to highlight subtle, covert and non-transparent detrimental practices, as well as to identify potential risks for the sustainability of media freedom achievements. The monitoring instrument can outline particular sectors, entities, procedures, practices and/or actors that may have a detrimental or undermining influence on the overall area of media freedom. It would inform stakeholders in the respective countries, open up relevant public dialogue and debate, raise public awareness and contribute to the improvement of legislation implementation and policy mechanisms. This approach would also provide a proper basis for international donors and other organisations to develop informed positions, relevant strategies and policies. It will allow for a more context-based approach to each enlargement country and may reflect its particular needs for assistance in the area of media freedom. The Media Pluralism Monitor (Valcke et al., 2009) can be a helpful tool for the monitoring and analysis of the media freedom and pluralism context and risks. Even if it is not used directly, but as an adapted or re-designed version, the tool that needs to be used should follow the MPM principles, namely it should take a comprehensive and risk-identification approach. Such a monitoring tool would also be a notable sign of the EU’s on-going commitment to issues related to media freedom. Monitoring would provide an additional, more focused instrument than the Progress Reports. Unlike the Progress Report, such a monitoring tool can use more scientific and less “diplomatic” language, reflecting even controversial issues without necessarily looking for a political balance, and sending clearer messages to local actors. The monitoring needs to result in detailed reports with measurable indicators, and they need to include recommendations. Setting up of follow up public consultations with stakeholders and the public should result in concrete action plans to tackle the problem areas identified and any recommendations. The

monitoring needs to be conducted by an independent organisation, e.g. NGO or research institution, and to be supported by the EU institutions in order to guarantee its independent application.

2. Prior impact assessment of legislation

Recommendation: The legal framework needs to be fine-tuned to the local context before its implementation, in order to achieve its goals.

In order to improve the efficiency of the legal framework implementation, it is recommended that an in-depth impact assessment of any proposed legal act or change be conducted prior to its implementation. Such an analysis would help to **reflect the local context** and to find the **appropriate way to achieve the aims and principles of the legislation** and avoid unintended consequences or misunderstandings. Such fine-tuning needs to be done by the EU institutions, but it is also recommended that working groups be organised with local experts in order to discuss and fine-tune the impact assessment and recommendations of the legal framework and its implementation in each particular context.

3. Capacity building and networking for regulators, PSB management and law enforcement

Recommendation: External actors should support capacity building and professionalisation of the local media authorities, the PSB management and the law enforcement authorities.

Based on the repetitious and often serious concerns relating to the professionalism and impartiality of regulatory bodies, and sometimes also of the PSB management and the law enforcement, it is recommended that efforts are made to guarantee the **proper capacity and professional qualifications** of these groups. In some countries of the region, professional relevance is not a condition for the construction of media authorities, neighed becoming part of the PSB authorities; in others, the principles are not followed properly or fully. As a result, media authorities are often perceived to be politically captured and/or politically instrumental and PSB management are perceived as the servants of the state apparatus. In either case, capacity building of the media authorities, regulators and PSB management is a key element to the proper implementation of the legal framework and professional standards. The same capacity building concern and recommendation is also valid for the judiciary dealing with media and journalism cases. Improving the competencies of the authorities usually also has the consequence of making those authorities less vulnerable to outside pressures. It also increases their reputation amongst the professional community and enables dialogue and mutual understanding between stakeholders. Organising multi-country events aimed at capacity building for the authorities can also create a fruitful exchange of experiences and best practices between countries. Apart from training schemes and consultations, regional networking events can be very beneficial. Institutionalised co-operation can be a forum for exchange of best practices and discussion of common challenges. Such forms of co-operation could be part of a permanent regional network of media authorities. Policy events, e.g. the Speak Up conferences and the activities of the SEE Media Observatory that have been conducted in the past, can be further institutionalised and strengthened. Similar networks can be established for self-regulators, unions, industry organisations, and others. However, the main expectations of improving the capacity of the above mentioned groups are related to the EU institutions, which are expected to present the best practices in the field of media freedom.

4. Transparency and fair rules for budget transfers to the media (licence fee top-ups, state aid, state advertising)

Recommendation: Budget transfers to the media should become transparent and distributed on the basis of clear and fair rules.

A key factor affecting media independence are state funds transferred to the media in various forms, including state advertising and state aid (in most countries). The **establishment and implementation of**

clear and fair rules for the distribution of state advertising (and state aid where relevant) is a crucial factor in avoiding or limiting the threat and practices of political interference in media and editorial policy. This is especially valid in the current context of global economic downturn and the consequently weak private advertising markets. In such a context, state advertising gains a considerable market share in the advertising market and becomes a crucial funder for media outlets. Establishing proper rules and procedures will limit the client-like relationships between media and politicians. Another crucial element in this respect is **transparency** in the distribution of state advertising budgets and state aid. On the one hand, the data should be **available to experts for a regular monitoring/auditing** procedure to be established. There should also be an opportunity for the self-regulatory bodies and professional associations to be involved in this process. On the other hand, the data should also be available to the public to **reassure and build trust** in transparent relationships between media and political power. All transfers of state funds to the public broadcasters should be done on the basis of transparent rules and procedures, adopted by the relevant bodies. Ad-hoc financing should be avoided. The lack of efficiency and the inability of the authorities in regard to licence fee collection should not be turned into a tool for political pressure on the public broadcasters. **Automatic procedures should be in place (included in the legislation) for budget allocations that will compensate for the low collection rate.** Efforts in this area can be seen to be related to fair market regulation, but their implications are much broader, as they contribute towards media independence and public trust - two elements of key importance for the sustainable functioning of a democratic society.

All these measures are related to modifications of regulations and practices employed by the authorities. However, this recommendation is also addressed to the EU institutions, which should monitor the allocation of funds (or request an independent local institution to do so) in order to guarantee to objective and unbiased media finances.

5. Ownership and funding transparency

Recommendation: There should be an effective implementation of media ownership and media funding rules, including with the help of support for objective audience research.

The transparency principle should be introduced and/or reinforced in all aspects relevant to the financial and market functioning of media outlets, in line with the general approach of the Council of Europe Recommendation No. R(94)13. It should include efficient procedures for guaranteed (a) **transparency of media ownership and media funding**, as well as (b) **professional and objective audience research** in order to determine the real audience shares and to create a more transparent advertising market. The current regulations targeting ownership and funding transparency show inefficiency on two accounts - (1) in not providing easily accessible, accurate, full and updated data on media ownership and funding, and (2) in not shedding light on the real owners and/or funders instead of figures who represent them. Efforts to resolve the first problem should result in the establishment of a comprehensive and user-friendly registrar. In order to address the second problem, such a registrar should be institutionalised and should provide data that is double- and cross-checked for inconsistencies with other databases, e.g., tax authorities, labour registrars, investigation of the origin of invested funds, etc. Notable sanctions should be in place for media outlets that do not co-operate in providing information, or that provide misleading information.

In order for media funding to be fair and transparent, especially with regard to advertising and state aid, objective and transparent information about the media consumption should be available, i.e. audience shares. Although often overlooked, this data is crucial for the efficient functioning of media markets. Such data can also reveal the cases of media that are maintained against market logic. Such data would also provide a very useful and objective criterion (together with others, e.g., quality of production) for the allocation of state advertising. Therefore, assistance in conducting professional and objective audience

research is highly recommended as a way to create a more transparent advertising market and consequently more transparent media funding.

In order to fulfil this recommendation, there needs to be efforts from the national governments and administration, the judiciary, as well as the audience research companies. There is also the responsibility of the EU institutions to monitor the proper implementation of transparency policies.

6. Support of non-government stakeholders

Recommendation: External actors should support the self-regulatory and NGO organisations in the media sector, in order to support the development of sustainable self-regulated, free and professional media sector.

Establishing a sustainably functional and free media market can be achieved only through encouraging and strengthening the entities within the respective countries and media communities. It is therefore recommended that **support** be given to the **self-regulatory journalistic organisations**, the **journalists' unions**, as well as other **organisations in the media industry and relevant stakeholders**, **NGOs that work in research, training and monitoring (watchdog)** the media and journalists. Such organisations would promote the application and monitoring of the Codes of Ethics, as well as the proper implementation of labour laws and the contracts of journalists. Supporting them will encourage the establishment or improvement of dialogue and cooperation within the media industry. The introduction and/or proper implementation of sanctions for those who divert from professional standards is also recommended. Further, the implementation of the respective Codes of Ethics in the Western Balkan countries should be monitored and regularly analysed and best practices popularised (this can be done as part, or in partnership with the comprehensive media freedom and pluralism monitor, mentioned above). The role of journalists' unions could also be facilitated through assistance in relevant capacity building, as well as by conducting research and monitoring employment conditions and violations in the respective countries. The existence of legitimate and representative media industry organisations has the potential to contribute to transparency and ethics in the media business, but also to enabling a proper dialogue with workers in the media industry, in negotiating collective agreements which regulate labour rights, statutes and other internal regulations, which provide conditions for professional conduct in each segment/entity taking part in the production and distribution of the media content. The fulfilment of this recommendation depends on the EU and other donors' support.

7. Support of investigative journalism and fundraising

Recommendation: Investigative journalism and fundraising should enjoy special support.

It is recommended that a specific help-line for investigative journalism in the Western Balkan countries be established. Further development of investigative journalism would be beneficial for the society as a whole, as it helps the media to fulfil their **role of watchdogs** and to reinforce the maintenance of democratic standards, and has a high impact. Due to the unstable financial status of media outlets in the Western Balkan countries and to political and economic pressures, investigative journalism is especially underfunded. The help-line for investigative journalism could include training, e.g. summer schools, online distance learning; as well as technical and financial support for particular journalists and/or productions; assistance and complimentary funding towards crowd-funding; introduction of a range of investigative journalism awards. Addressing the economic difficulties of media outlets and the related exposure to political influences, it is also recommended to provide training and increase the capacity of journalists and editors to fundraise and secure the necessary funds for their media outlets and journalistic projects. This recommendation is addressed to the EU institutions and their media support programs.

8. Pilot Project for a European Centre for Press Freedom

Recommendation: The Pilot Project for a European Centre for Press Freedom should become a complementary instrument for external support for media freedom.

The Pilot Project for a European Centre for Press Freedom, covering a previously neglected area of violations of media freedom, is a **positive sign of the EU's commitment** to media freedom issues. It is expected to contribute to assisting local journalists and to provide much-needed support, especially in some countries where such support is not available from other sources. However, if the project is maintained in its current format, it can represent a **complementary instrument** in this area. In terms of monitoring, it provides information only about a very limited range of media freedom problems. This can be incorporated into the more comprehensive monitoring proposed above and contribute to a better understanding of the challenges in the region. In terms of journalistic support, only a more profound and complex change in the media market, in the independence of media regulators, and in the relations between political powers and the media, can bring about sustainable and significant change in the working context of journalists. This recommendation is addressed to the European Parliament.

9. Integrated program

Recommendation: All programs of the external actors should be part of an integrated and consistent approach/program, in order to achieve optimal and sustainable impact.

In order to achieve the full potential of external assistance in the area of media freedom, it is recommended that every initiative should be framed within an **integrated and consistent approach/program** in the area. Such continuity would create a constructive, predictable and reliable context, in which all stakeholders establish constructive patterns of interaction. Such an approach will also send a strong signal to the transgressors of media freedom and pluralism principles about the EU's commitment; and it will strengthen the impact of EU policies on issues related to media freedom. A long-term approach will also allow for adequate capacity building. This type of program will be beneficial regardless of its form - as a particular conditionality of the accession negotiations, related to media freedom; or as an advisory, assistance and sharing process of soft law instruments and best practices. Such an integrated program should include proper financial support.

The EU could consider media freedom and pluralism as a specific chapter in the *acquis communautaire* and the EU should stress its competence in this area. Such an approach would reflect the needs of democratic assistance in the countries of the region and also the expectations of wide parts of civil society and the media professional community. Media freedom and pluralism should be tackled at the accession level as conditionality that would create sustainable guarantees for free and independent media, and high professional standards and culture in journalism. Moreover, the standards of this *acquis* should be stressed after the countries' accession in order to avoid the application of 'double standards' towards EU potential members and EU Member States. This recommendation is addressed to the EU.

10. EU, OSCE and Council of Europe in co-operation

Recommendation: The collaboration and co-ordination between European Parliament, European Commission, OSCE, and Council of Europe in the field of media freedom should be strengthened.

It is also recommended to strengthen the level of **co-ordination and complementary roles** of the European external actors, i.e. European Parliament, European Commission, OSCE, and Council of Europe. All their initiatives should be consistent and aim at providing overall support instead of disconnected initiatives. It is recommended that the EU institutions construct a **centralised co-ordinated plan/program** or/and a **co-ordination working group** together with the OSCE and the Council of Europe. The goals and activities of these two organisations, regarding media freedom and pluralism in the Western Balkans are

complementary to the EU approach. However, they do not have the administrative capacity and the assistance instruments that the EU institutions have. Therefore, an institutionalised cooperation is feasible and would be mutually beneficial. Such an institutionalised cooperation at a central level would contribute to the somewhat patchy effort to establish a coordinated approach and activities at the local level. The coordinated work of these two institutions and the EU institutions will benefit from the competencies and complementary experience of the OSCE and Council of Europe on the one hand, and the administrative and financial capacities and instruments of the EU institutions on the other hand. Establishing such a permanent co-ordination board for the implementation of the regional support strategy would also benefit from the involvement of officials in the EU delegations in the region who cover freedom of expression and freedom of the media issues. In order to fulfil this recommendation, the EU institutions should collaborate with the rest of the institutions.

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ISBN 978-92-823-6040-8
doi: 10.2861/70542